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THE
JUSTICE OF THE PEACE

AND

Parish Officer.

BY

RICHARD BURN, LL.D.

The Twenty-eighth Edition,

CORRECTED AND GREATLY ENLARGED,

AND WITH MANY NEW TITLES;

AND CONTAINING

A COLLECTION OF NEW AND AMENDED PRECEDENTS.

THE TITLES "EXCISE AND CUSTOMS," "POOR," AND "TAXES,"

BY

J. CHITTY, Esq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW,

ASSISTED IN THIS VOLUME BY

MONTAGUE B. BERE, Esq.

OF LINCOLN'S INN, BARRISTER AT LAW,

AND THE REST OF THE WORK BY

THOMAS CHITTY, Esq.

OF THE INNER TEMPLE.

IN SIX VOLUMES.

VOL. IV.

ON

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LONDON:

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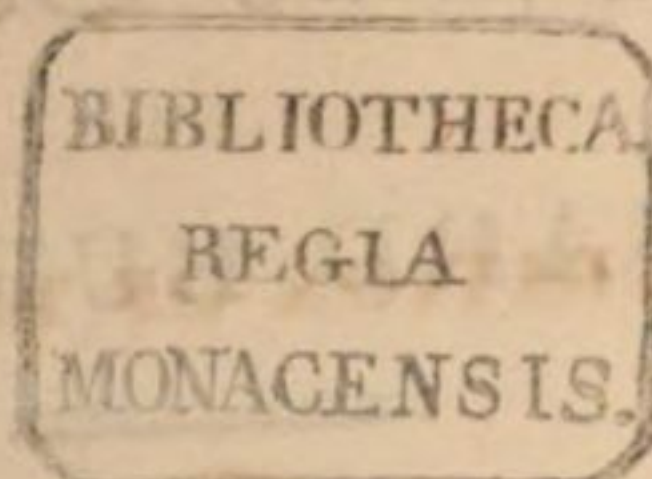
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Law Booksellers and Publishers.

1837.

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TO

THIS EDITION OF THIS VOLUME.

1st. This volume commences with a chronological statement of the *Statutes* referred to, and the pages where they are commented upon.

2ndly. An alphabetical *table of the names of the cases* and the pages where they are referred to.

3rdly. Then is given an *analytical table of the contents* of the volume, referring to the pages in which each part is to be found.

4thly. Follows the *body of the work*, greatly enlarged, with entirely new heads, and showing the important alterations introduced by the new system.

5thly. Then follow the *Addenda*, containing a statement of such points and new decisions as have been suggested or have been decided during the progress of the work, to *the end of last Michaelmas Term*.

6thly. Is given an *Appendix of Forms*, most of which are entirely new, and all of them have been settled by the editor with care and attention.

7thly. Concluding the volume, is the *Index*, which has been considerably enlarged, and is new in arrangement, and on reading every considerable head, it will be found to contain an outline of the law applicable to it, being the preferable mode of forming an Index.

Throughout this volume considerable improvements have been made. The statutes are stated in the very words of the enactments. Unnecessary details of facts in the cases have been compressed. Several new titles and subdivisions have been introduced. The Editor again avails himself of the opportunity of acknowledging his great obligations to his friend Mr. MONTAGUE B. BERE, of the Western Circuit, for many valuable suggestions throughout this volume, and in framing the Index.

1837.

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THE
JUSTICE OF THE PEACE
AND
PARISH OFFICER.

Poor.

CHAPTER I.

OF THE ORIGIN AND PROGRESS OF THE POOR LAWS, AND OF
THE PERSONS CONCERNED IN THEIR ADMINISTRATION;
AND OF WORKHOUSES, AND THE RELIEF OF THE POOR IN
GENERAL.

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I. *Of the Origin and Progress of the Poor Laws, and the recent Alterations.*

Relief of the poor
anciently an eccle-
siastical concern.

ACCORDING to the early writers upon the subject of the *poor*, and *their relief*, one of the first consequences of the establishment of the Christian religion in this kingdom, was a provision for the maintenance of the poor. It is stated that a fourth part of the tithes of every parish was devoted to this purpose under the direction of the minister, assisted by the churchwardens and other principal inhabitants; and as it was regarded as a matter of eccle-

siastical concern, the whole was under the supervision and control of the bishop whenever his interference became necessary.

Blackstone upon this subject says, "The poor of England till the time of Henry VIII. subsisted entirely upon private benevolence and the charity of well disposed Christians. For though it appears by the *Mirroure*, that by the common law the poor were to be 'sustained by parsons, rectors of the church, and the parishioners, so that none of them die for default of sustenance;' and though by the statute 12 R. II. c. 7, and 19 Hen. VII. c. 12, the poor were directed to abide in the cities or towns wherein they were born, or such wherein they had dwelt for three years, (which seem to be the first rudiments of *parish settlements*,) yet till the statute 27 Hen. VIII. c. 25, I find no compulsory method chalked out for this purpose; but the poor seem to have been left to such relief as the *humanity* of their neighbours would afford them." (1 *Bla. Com.* 359.) Still, however, if the contributions were voluntary, the method was, in the course of time, so far reduced to a system, as to be sanctioned and upheld by acts of parliament, for by the statute last cited, the *churchwardens* or *two others* of every parish were to make *collections* for the poor on Sundays. By 5 & 6 Ed. VI. c. 2, the minister and churchwardens were annually to appoint two able persons or more to be *gatherers* and *collectors* of *alms* for the poor. By 5 Eliz. c. 3, the *parishioners* were to choose these collectors, and by 14 Eliz. c. 5, the appointment was to be made by the *justices*, who were also to appoint *overseers*. And the 18 Eliz. c. 3, is to the like effect. By 39 Eliz. c. 3, the churchwardens of every parish, and four substantial householders, were to be nominated yearly in Easter week by two justices, and called *overseers of the poor*. Next followed the important statute 43 Eliz. c. 2, out of which, Dr. Burn observes, more litigation, and a greater amount of revenue have arisen, with consequences more extensive and more serious in their aspect, than ever were identified with any other act of parliament or system of legislation whatever. By these and other acts, as observed by Sir John Nicholl, in *Wilson v. M'Math*, 3 *Phillimore's Rep.* 88, the maintenance of the poor has now become much more matter of *temporal* than of *spiritual* concern.

The consequences of which Dr. Burn here speaks, became so serious, that after several ineffectual attempts to remedy them, in A. D. 1831 a commission was issued "to make diligent and full inquiry into the practical operation of the laws for the relief of the poor in England and Wales, and into the manner in which those laws were administered, and to report their opinion as to what beneficial alterations could be made." The result of this inquiry was laid before the Houses of Parliament in 1834, and the commissioners reported, "that the fund which the 43 of Eliz. directed to be employed in setting to work children and persons capable of labour, but using no daily trade, and in the necessary relief of the *impotent*, had been applied to purposes opposed to the letter, and still more to the spirit of the law, and destructive to the morals of the most numerous class, and to the welfare of all. That the great source of abuse was the *out-door relief* afforded to the able-bodied on their account, or on that of their families, given either in kind or in money." They also reported, that "great maladministration existed in the workhouses." To remedy the evils, they proposed considerable alterations in the law; and the principal portion of their suggestions was embodied into the 4 & 5 Will. IV. c. 76, which received the royal assent on the 14th August, 1834. The important alterations in the relief and management of the poor, which have been introduced by this statute, induce the present editors to give the whole statute in the *Appendix*, with occasional references, in notes, to the Report of the Commissioners. The various alterations of the previously existing law will be noticed also in their proper places. It is necessary to premise generally, that one great object of this statute was, to produce an uniform system of relief and management of the poor throughout England and Wales; and for this purpose a *Central Board of Commissioners* has been appointed.

In former editions of this work, although principally designed for the assistance of justices of the peace, there was no general summary of their

I. Of the Origin and Progress of the Poor Laws.

Funds were collected from voluntary contributions.

But are now matter of temporal concern.

Poor Law Commission.

Report of the commissioners.

1. *Of the Origin and Progress of the Poor Laws.*

powers and duties; but it is now proposed to enumerate, in a brief form, the principal points relating to *justices*, before entering on the general title of "*Officers concerned in the administration of the Poor Laws.*"

II. Of the Persons concerned in Administration of Poor Laws.

1. *Justices.*

1. Of Justices of the Peace, their Jurisdiction, Powers, and Duties relating to the Poor.

Before the recent statute of 4 & 5 Will. IV. c. 76, the justices of the peace had the *general superintendence* over all persons entrusted with the care and management of the poor, and they entirely directed the mode and amount of relief which should be given to the poor. This latter part of their duties has been almost, if not altogether, transferred to the Poor Law Commissioners. (a) Still, however, by various legislative enactments, it will be found that the justices out of sessions have many important duties to perform. They are authorized to appoint overseers; (b) to supply a vacancy caused by the death, removal, or insolvency of an overseer; (c) to allow their accounts, and to cause books to be delivered to their successors; (d) to compel the overseer to perform every order made under 17 Geo. II. c. 38; (e) and to pay the required rates to the guardians. (f) With regard to the relief of the poor, by the statute of Eliz. the overseers were required to take order for the relief and employment of the poor, "by and with the consent of two or more justices of the peace."

43 Eliz. c. 2.
Two justices.

3 W. & M. c. 11.
One justice.

By 3 W. & M. c. 11, s. 11, the overseers were required to keep a register of all persons who were admitted to receive relief, and no other person was to be allowed "to receive collections at the charge of the parish but by the authority of *one justice* of the peace."

9 Geo. I. c. 7.

By 9 Geo. I. c. 7, s. 1, no justice of the peace shall order relief to any poor person dwelling in any parish, until oath be made before such justice of the peace of some matter which he shall judge to be reasonable cause for having such relief; and that the person had applied for relief to the parishioners, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to show cause why such relief should not be given; and the person so summoned hath been heard or made default to appear before such justice.

36 Geo. 3, c. 23.
55 Geo. 3, c. 137,
s. 3.
59 Geo. 3, c. 12, s. 5,
repealed by 4 & 5
W. 4, c. 53, s. 53.

By the 36 Geo. III. c. 23, the enactments of which were extended and modified by the 55 Geo. III. c. 137, s. 3, and the 59 Geo. III. c. 12, s. 2 and 5, magistrates were empowered to order relief to poor persons at their homes, notwithstanding a workhouse had been provided and contracts entered into for lodging, keeping, maintaining, and employing the poor. But this statute, (36 Geo. III. c. 23,) as well as the above-mentioned sections, by which it was so extended and modified, have been repealed by the Poor Law Amendment Act, and consequently the powers which the justices derived therefrom have terminated.

The acts of 3 W. & M. c. 11, and 9 Geo. I. c. 7, are not repealed by 4 & 5 Will. IV. c. 76, and those acts still authorize justices of the peace to exercise a *control over the overseers in the administration of relief to the poor*. But this control can now be exercised only in parishes in which there is no board of guardians, no select vestry, or other similar body constituted under any local or general act. (g)

It will be observed, however, that the 4 & 5 Will. IV. c. 76, s. 54, enacts,

(a) The Poor Law Commissioners have declared, that since the 4 & 5 Will. IV. c. 76, s. 27, justices of the peace cannot specify in their order what *kind or quantity* of relief shall be given.

(b) 43 Eliz. c. 2.

(c) 17 Geo. II. c. 38, s. 3.

(d) 17 Geo. II. c. 38, s. 3.

(e) *Ib.*

(f) 41 Geo. III. c. 9.

(g) We are indebted for this remark to a circular issued by the commissioners in October, 1834.

that it shall not be lawful for any justice, by writing under his hand and seal, to order relief to any person from the poor-rates, except as therein provided; and though this clause refers to unions and select vestries, the limitation of this power of the justices is in general not confined to such cases only; and where they can exercise a control, no relief can be ordered for any person out of the workhouse, unless the rules of the commissioners direct it. (Sect. 52.) However, even when there is a board of guardians, *one justice is authorized*, in cases of *sudden and urgent necessity*, to order *temporary relief* in articles of absolute necessity, but not in money; and in cases of *sudden and dangerous illness*, to give a similar order for *medical relief* only; and in any union, *two justices* may order relief to be given to any adult person who, from old age or infirmity, shall be wholly unable to work, without requiring such persons to reside in the workhouse. (Sect. 27.)

Justices also have, under 4 & 5 Will. IV. c. 76, power to enforce the repayment of loans made by the guardians, and for this purpose may order the master of the pauper to pay the wages to the guardians. (Sect. 59.) The *proper relief* to be given by the guardians under 22 Geo. III. c. 83, is to be determined by the justices, although the visitor alone must decide whether that relief shall be given in or out of the workhouse. (a) In their petty sessions the justices may make an order upon the grandfather, father, &c. to maintain their grandchildren or children; (b) but no such power is given to enforce the extended liability of those who marry women having children; (c) other statutes authorize justices to seize the goods and rents of persons deserting their families, (d) and on complaint of guardians, to punish such as neglect them. (e) When Chelsea or Greenwich pensioners desert their families, (f) the justices may attach their pensions, and may direct the owners of merchant ships to pay the wages of the seamen employed by them to the relief of their families. (g) They may also order the wages of those who have been convicted of smuggling, and are serving in the king's ships, to be applied to the relief of their families. (h) They formerly possessed a similar authority in providing relief for the families of militiamen, (i) but this is now repealed. (k) A power is given to them to order relief to prisoners for debt in gaols (not being county gaols) under mesne process. (l)

The *poor-rate* must be *allowed* by them, (m) and its *payment* may be *enforced* by them by a warrant of distress after a summons. (n) *Parish apprentices* are still to be bound out under their order and direction; and they are further required (in addition to their consent and allowance) to ascertain if the rules of the commissioners for binding out apprentices have been complied with, and to certify the same at the foot of the contract or indenture. (o) The complaints of apprentices in trade or business are cognizable before them. (p) Their consent was formerly required to the union of parishes. (q) The select vestry received its appointment from the justices, (r) who also consented and approved of the guardians, (s) visitor, (t) treasurer, (u) and governor, (v) and might appoint the keeper of such workhouse to be such governor. (w) Upon the neglect of any guardian to pay the money in his hands, the justices might enforce it, (x) and they may punish them for enticing persons to remove without an order. (y) Their assents to contracts for the maintenance of the poor is repealed. (z)

It is an essential part of the duty of justices to visit and examine the

II. *Of the Persons concerned in Administration of the Poor Laws.*

4 & 5 W. 4, c. 76.
One justice.

Two justices.

Loans.

The wages.

Proper relief
under Gilbert's
Act.

Poor rate.

Apprentices.

(a) Sect. 36.

(b) 59 Geo. III. c. 12, s. 36.

(c) 4 & 5 Will. IV. c. 76, s. 57.

(d) 5 Geo. I. c. 8.

(e) 22 Geo. III. c. 83, s. 31.

(f) 59 Geo. III. c. 12, s. 29.

(g) *Ib.* s. 32.

(h) 11 Geo. IV. c. 10, s. 2.

(i) 43 Geo. III. c. 47.

(k) 4 & 5 Will. IV. c. 76, s. 60.

(l) 52 Geo. III. c. 160.

(m) 43 Eliz. c. 2.

(n) *Ib.*; and 17 Geo. II. c. 38, s. 7.

(o) 4 & 5 Will. IV. c. 76, s. 61.

(p) 33 Geo. III. c. 55, s. 1.

(q) 9 Geo. I. c. 7, s. 4.

(r) 59 Geo. III. c. 12.

(s) 22 Geo. III. c. 83, s. 3.

(t) Sect. 10.

(u) Sect. 12.

(v) Sect. 9.

(w) 50 Geo. III. c. 50, s. 3.

(x) 22 Geo. III. c. 83, s. 24.

(y) Sect. 41.

(z) 4 & 5 Will. IV. c. 76.

II. *Of the Persons concerned in Administration of the Poor Laws.*

workhouse; and where the commissioners have issued any rules for the government thereof, to see that they have been obeyed; (a) and if no rules have been directed, their original jurisdiction continues. (b)

In the unions under 4 & 5 Will. IV. c. 76, the justices are guardians *ex officio*, (c) and in all parishes they are exempt from serving the office of overseer. Their consent was required for the sale of old poor houses, (d) and they are empowered to deliver possession of parish houses to the overseer. (e)

Their jurisdiction over the *contractors* for the maintenance of the poor is, by 50 Geo. III. c. 50, co-ordinate with that which they have over *overseers*. (f)

They have power to punish persons injuring the parish books; (g) persons buying or receiving into pawn, or absconding with goods provided for the maintenance and employment of the poor; (h) orders of removal must still be made by them.

By the 5 & 6 Will. IV. c. 76, jurisdiction is given to county justices in all boroughs which have not a separate court of quarter sessions under that act.

Any *summons* issued by a justice under 4 & 5 Will. IV. c. 76, is duly served by leaving the same at the last known place of abode of the party. Sect. 90.

Service of summons.

2. *Commissioners.*

2. *The Poor Law Commissioners, their Powers and Duties.*

Three commissioners under 4 & 5 Will. 4, c. 76, s. 1. (i)

The stat. 4 & 5 Will. IV. c. 76, s. 1, enables his majesty to appoint *three commissioners* for five years, to carry the statute into execution; and the administration of the relief of the poor, according to the existing law, or such laws as shall be in force for the time being, are subject to their direction and controul. The great power and authority of the commissioners will be best understood by reciting the enactment at length.

Administration of relief to the poor to be under controul of the commissioners, who are to make rules and regulations for the management of the poor and administration of the laws for their relief, &c.

The 4 & 5 Will. IV. c. 76, s. 15, enacts, "that the administration of relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force at the time being, shall be subject to the *direction and control of the said commissioners*; and for executing the powers given to them by this act, the said commissioners shall, and are hereby authorized and required, from time to time as they shall see occasion, to make and issue all such rules, orders and regulations, for the management of the poor, for the government of workhouses and the education of the children therein, and for the management of parish poor children under the provisions of an act made and passed in the seventh year of the reign of his late majesty King George the Third, intituled 'An Act for the better regulation of parish poor children of the several parishes therein mentioned within the bills of mortality,' and the superintending, inspecting, and regulating of the houses wherein such poor children are kept and maintained, and for the apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this act into execution in all other respects, as they shall think proper; and the said commissioners may, at their discretion, from time to time suspend, alter, or rescind such rules, orders, and regulations, or any of them: provided always, that nothing in this act contained shall be construed as enabling the said commissioners or any of them to interfere in any individual case for the purpose of ordering relief."

These general rules must be submitted to one of the secretaries of state forty days before they come into operation, and the king, by the advice of his privy council, may disallow them within that time, or afterwards, and upon

(a) 4 & 5 Will. IV. c. 76, s. 43.

(b) 30 Geo. III. c. 49, s. 3.

(c) Sect. 38.

(d) 1 & 2 Geo. IV. c. 86, s. 1.

(e) 59 Geo. III. c. 12, s. 24.

(f) Sect. 2.

(g) 58 Geo. III. c. 69, s. 6.

(h) 55 Geo. III. c. 137, s. 2.

(i) See the several enactments, *post*, Appendix.

Commissioners may suspend or alter rules, &c.

such disallowance they are to cease to operate, s. 16. And all general rules in force at the sitting of parliament, shall, within one week after the commencement of the session, be laid before both houses, s. 17. Before the same can have any operation in any union or parish, a copy of them must be sent to the overseers, the guardians of the union or clerk, and the clerk of the justices of the petty sessions, who are required to give publicity to them, to allow inspection, and give copies of them, s. 18.

The commissioners are also empowered to make rules for present or future workhouses, and vary bye-laws already in force or to be made hereafter, and no addition to the schedule of 22 Geo. II. c. 38, is valid till confirmed by them.

A rule which affects more than one union is a *general* rule, and is to be distinguished from the rules, &c. issued for the government of a *particular* union or parish; and although the rules which the commissioners have issued for the management of the various unions correspond with each other in their leading features, yet they differ in some minute particulars, suggested by local convenience. The validity of any rule may be determined by removing it into the Court of King's Bench by certiorari, s. 105.

Before this statute, much benefit had been derived from the union of parishes for the relief of the poor and the use of a common workhouse; and the commissioners are empowered to effect this object, and even if necessary without the consent of the parishioners. Already a very large number of unions have been formed, and the whole kingdom of England and Wales will be speedily brought under the same arrangement.

The commissioners may, with the consent of the majority of guardians of any union, or a majority of the rate-payers and owners of property in any parish, order a workhouse to be built, purchased, or enlarged, s. 23. They may, *without consent*, direct any parish or union, having a workhouse or a building convertible into a workhouse, to be enlarged, but the principal sum to be raised in any parish must not exceed 50*l.*, nor one-tenth of the average annual amount of the rates for three years, s. 25.

The commissioners are entitled to attend every parochial and other local board and vestry, and take part in the discussions, but not to vote. Besides the great power which is given to them by the second section, of requiring the attendance of persons, and the production of papers, they are expressly empowered to require, from any person holding a trust property belonging to the parish, or which may be applicable to the relief of the poor, an account of such property and its application; and by sect. 90, service of summons on the party's last place of abode is sufficient. Sect. 98 imposes a penalty on the disobedience of their orders, or contempt of the board.

3. Assistant Commissioners.

The principal commissioners are empowered by 4 & 5 Will. 4, c. 76, s. 7, (a) to appoint *nine assistant commissioners*, and to delegate their authority to them, and with the exception of making a general rule, the assistants may exercise all the power of the principal commissioners.

4. Guardians.

All the power and authority given by any statute to overseers, (with the exception of making and *collecting rates*,) was transferred by Gilbert's Act, (b) the 22 Geo. III. c. 83, to *guardians* in every parish or united parishes, which adopted the provisions of that act; and the same powers are given to the guardians appointed under 4 & 5 Will. IV. c. 76. There is reason to believe that every parish will soon form part of some *union*, and therefore be under the care of guardians. In a work then which treats of the duties of parish

2. *The Poor Law Commissioners, their Powers and Duties.*

General and particular rules, &c.

Certiorari.

Union.

Workhouses.

May attend boards and vestries, but not vote.

Account of property in trust for the parish.

Service of summons.

Disobedience of orders and contempt.

3. *Assistant Commissioners.*

4. *Guardians.*

(a) Sect. 9 also enables them to appoint a *secretary*, *assistant secretaries*, *clerks*, *messengers*, and other officers. See Appendix.

(b) This act was popularly known as Gilbert's Act, from the name of the member who introduced it.

4. *Guardians.* officers in general, as well as of justices, a full exposition of the duties of all persons concerned in the administration of the poor laws will not be misplaced. The editors attach much importance to this branch of the subject, and therefore have treated it in detail, under the following subdivisions, of the appointment and duties of guardians under the 4 & 5 Will. IV. c. 76, and the rules of the commissioners, as well as their appointment and duties under preceding statutes.

1. APPOINTMENT OF GUARDIANS UNDER 4 & 5 WILL. IV. c. 76. (a)

Guardians in a single parish.

In unions.

Election of, and number.

Qualification.

Duration of office.

Justices ex officio members.

Rate-payers.

Scale of voting.

Rated for a year, and paid.

Voting by proxy.

Rule of commissioners.

The commissioners are empowered to direct that the administration of the laws for the relief of the poor of any *single* parish shall be governed by a board of *guardians*, sect. 39; and where a union of parishes has been formed, a board of guardians shall be chosen, the workhouse shall be governed, and the relief of the poor administered by them, sect. 38. The guardians are to be elected by the rate-payers and owners of property. The commissioners are to determine the whole number, as well as the number for each parish. The persons must be qualified by being rated at a sum to be fixed by the commissioners, but not to exceed the annual rental of 40*l.* They are to continue till 25th of March, or appointment of successors, and may be re-elected. The election to be held within fourteen days of the 25th of March. Justices of peace residing in the parish, and acting for the county, are ex officio members of the board. None of the guardians are *paid* officers. The owner is entitled to the same number of votes as persons are entitled to by the 58 Geo. III. c. 69, (b) and for the purpose of ascertaining that number, the assessment of the property in the rate shall be deemed the *annual* value. When the owner is also the occupier, he may vote in each character, and the officer of a corporation or company may vote as owner. Persons rated under 200*l.* shall have a single vote; at 200*l.* and under 400*l.* two votes; and at 400*l.* or more, three votes; such person must have been rated to the poor for the whole year preceding his voting, and paid the parochial rates assessed on him for one whole year, except such as were due within six months preceding his voting. The owner may vote by proxy, but whether he votes in person or by proxy he must give a previous statement of his property, &c. Persons not complying with the directions of the commissioners considered to have *no* vote.

Since the 4 & 5 Will. IV. c. 76, a barrister, on 11th March, 1835, gave his opinion that a churchwarden or overseer, having the necessary qualification and other requisites, was nevertheless ineligible, by reason of his office, to be elected guardian. But on such opinion being laid before the attorney-general by the commissioners, he was of opinion that a churchwarden or overseer might be elected guardian for his parish, and sit as guardian, notwithstanding his being churchwarden or overseer at the time, and this latter opinion has been since constantly acted upon.

The commissioners have also signified their opinions, first, that a guardian elected for *two* parishes in a union, has only one vote at the board, see sect. 38; secondly, that a corporation justice is not a guardian ex officio. (See *Evans qui tam v. Stevens*, 4 Term Rep. 224, 459, and confirmed by an opinion of the attorney-general.) The words of the act are, "justices acting for the county, riding, or division." The latter word applies to Lincolnshire, and not to towns, &c. of exclusive jurisdiction.

2. THE POWERS AND DUTIES OF GUARDIANS.

The relief of the poor.

The workhouse.

To the guardians belong exclusively the ordering and directing of all relief to the poor of the several parishes and places comprised in the union, and the building, hiring, and providing of any workhouse, poorhouse, or other

(a) The general subject of *unions* will not amounting to 50*l.* is entitled to one vote; amounting to 50*l.* and upwards, be considered in a separate chapter.

(b) By that statute (which see *post*, title "*Parish Vestries*") an inhabitant assessed at an annual rent or profit to one vote for every 25*l.*, but none entitled to more than six votes.

premises, for the reception and maintenance of paupers therein, and the altering, improving, or enlarging the same, or any other existing workhouse or poorhouse within the said union, and the regulation and management thereof, and the hiring or purchasing of land for such workhouse or workhouses, or for the employment of paupers therein, subject to the directions of the poor law commissioners, and excepting such powers as in the act are given to justices of the peace and overseers of the poor.

No guardian can act except at a meeting of the board, (a) and there to make a quorum three guardians must concur. (b)

The guardians must meet weekly, and extraordinary meetings may be held on giving the notices of the rules, or without notice in cases of emergency.

At the board they must direct the nature and amount of relief to be given, subject however to the rules relating to relief, (which see *post*, "**Relief**") and hear the application of paupers, who have previously applied to the relieving officer. They must determine the kind of work to be done by paupers in or out of the workhouse, and give directions to the overseers for raising the money payable by their parish.

The duty of giving relief and employment, and making inquiries relating to the poor, is entrusted to the "relieving officer," whom guardians have been directed, under the 46th sect. of 4 & 5 Will. IV. c. 76, to appoint and to pay.

4. Guardians.

Employment of the poor under their controul.
Reservation of power of commissioners, justices, and overseers.

To act at a board.
Three to be a quorum.
Meetings.

Relief.

Application of paupers.
Work.
Expenses.

Relieving officer.

3. APPOINTMENT OF GUARDIANS UNDER 22 GEO. III. c. 83.

It will be found that the principle of Gilbert's Act has been much followed in the recent enactments; but by 4 & 5 Will. IV. c. 76, the option of appointing guardians and directing the unions of parishes, is transferred from the rate-payers to the commissioners.

By the 3d sect. of 22 Geo. III. c. 83, a single parish might avail itself of the provisions of the act, and appoint guardians, upon complying with certain regulations prescribed in that section and some later statutes, (c) and also adopting the forms in the schedule. The same power was given to *two* or more parishes to unite, and the guardians were directed to execute an agreement for that purpose, according to a form prescribed.

Sect. 6 requires "that the notice for every public meeting directed by this act, shall be given in the church or chapel of every such parish, township, or

Notice of meetings.

(a) 1st rule of commissioners for ——— union. See Appendix.

(b) Sect. 38.

(c) As the practical utility of these statutes is much diminished, the substance of them only is given here.

By this section, whenever *two-third* parts in number and value, according to the poor rate, of the owners or occupiers of lands, &c. within any parish, qualified as therein mentioned, should, at a meeting holden pursuant to the act, signify their desire to adopt its provisions, and should recommend to the justices *three* persons qualified for guardians of the poor, and *three* persons qualified to be governors of the poorhouse, and fix the salaries to be paid to such guardian and governor, and should procure the consent of two justices, such parish was entitled to all the benefits and powers of the act. The *two-third* parts were by 33 Geo. III. c. 35, s. 1, to be *two-third* parts in number and value of such qualified persons only, actually attending such public meeting; and by sect. 2,

if such meeting signified their opinion to the justices, that on account of the extent and population of such parish, more than one guardian of the poor was necessary, and shall desire that two may be appointed guardians, the justices might appoint two guardians. This power was further enlarged by 41 Geo. III. c. 9, s. 1, which enacted, if it shall be the opinion of two-thirds in number and value of the owners or occupiers of lands, &c. that one guardian is insufficient for carrying into due execution the provisions of the said act, and the same shall be certified by two of the persons present at such meeting to two justices, together with the names of four persons qualified for the office of guardian, the justices might appoint so many of them to be guardians of the poor as they in their discretion thought necessary for duly carrying the act into execution. The first part of the 7th sect. of 22 Geo. III. c. 83, made similar provisions for the appointment of a guardian for each parish in a union.

4. Guardians. place, on three successive *Sundays* before the time of such meeting, immediately after divine service, or on such of the said *Sundays* as service shall be performed there, and also fixed in writing on such church or chapel door, or if no church or chapel, at some public place within any such parish, township, or place, where notices of parish business have been usually given, fifteen days at least before the day to be appointed for such meeting, in the form or to the effect mentioned in the said schedule, No. VI."

This section then described the qualification of voters to be an assessment to the poor-rate, after the rate of 5*l.* at least, and payment of the rates; if there were not ten qualified persons in the parish, then every person assessed and paying rates might vote; but all elections under this act or any local act must now be governed by 4 & 5 Will. IV. c. 76. (See sects. 38, 41.)

4. POWERS AND DUTIES OF SUCH GUARDIANS.

Guardians are to be overseers.

By sect. 7 of Gilbert's Act, 22 Geo. III. c. 83, "every such guardian shall attend the monthly meetings thereby directed to be holden, and execute the several powers and authorities given to guardians by that act, and shall have and is hereby invested with all the powers and authorities given to overseers of the poor by any other act or acts of parliament, and shall to all intents and purposes^(a) (except with regard to *making and collecting rates*) be an overseer of the poor for the parish or township for which he shall be so appointed guardian, and shall be liable to such forfeitures and penalties for neglect of duty as overseers of the poor are made liable to by this or any other act of parliament, and all notices or applications directed by this or any other act of parliament to be given or made to the overseers of the poor with respect to the care and management or removal of the poor, shall be given and made to the guardian of the poor, where any such guardian shall be appointed under the authority of this act; but in case any orders of removal or notices shall happen by mistake to be given or sent to the churchwarden or overseer, the same shall be as valid and effectual as if given to the guardian; and such churchwarden or overseer shall, and is hereby required forthwith to deliver the same to the guardian, or shall forfeit forty shillings for his neglect."

Orders and notices, &c., to be delivered to guardians.

Overseers not to interfere.

"Where such guardian of the poor shall be appointed as aforesaid, neither the churchwardens nor overseers of the poor shall interfere or intermeddle in the care and management of the poor, but shall continue to have and be invested with the same powers of making and collecting poor's rates as they have at present, and shall be subject to the like penalties for neglect or misbehaviour in making and collecting such rates as they were at the time of passing this act."

Penalty for absence from monthly meetings.

By sect. 26, "If the guardian for any parish, township, or place, which shall adopt the said provision as aforesaid, shall not attend each monthly meeting hereby directed to be holden, or send some substantial inhabitant of such parish, township, or place, to attend and answer the payments for him, in case he shall be prevented by sickness or other unavoidable accident from attending in person, the guardian for every such parish, township, and place, making such default, shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than forty shillings."

Officers, how long to continue.

By sect. 14, "The offices of guardian, governor, visitor, or treasurer, to which any person shall be appointed under the authority of this act, shall determine in *Easter* week next after the respective persons shall be appointed thereto, on the day upon which the public meeting for such parish, township, or place, shall be held there, when the persons who, according to this act, are qualified and have a right to recommend another person to the justices, to be appointed to such office, shall either agree with the persons who held

(a) Although these words are very strong, yet it appears by subsequent parts of the statute that various powers are expressly given to guardians, but the power of putting out apprentices not mentioned, the overseers and not guardians are the proper persons to bind out apprentices. (*R. v. Lutterworth*, 3 B. & Cres. 487; 5 D. & R. 343, S. C.; see *post.*)

the same to continue in such office, or shall proceed to recommend others, in the manner hereinbefore directed, as if such person had died."

Sect. 13. "That when and as often as any vacancy shall happen in any of the offices aforesaid by death, resignation, or removal, meetings shall be called, and recommendations offered to the justices in manner aforesaid; and they shall proceed, so soon as conveniently may be, in the manner before directed, to appoint a fit and proper successor to the person so dying, declining to act, or so removed as aforesaid."

The whole care and management of the poor was entrusted to such guardians, reserving to the overseers the duty of *making the rates and collecting the same*. This is the general language of the statute. See, however, *R. v. Laughton*, *post*, title "*Workhouse*," for some limitation of their authority.

4. *Guardians.*

Vacancies, how to be filled up.

General result as to guardians' powers.

5. *Of Overseers of the Poor.*5. *Overseers.*

One of the earliest enactments relating to any parochial officer to collect monies for the use of the poor was the 27 Hen. VIII. c. 25. By 5 & 6 Ed. VI. c. 2, the minister and churchwardens were annually to appoint *two able persons or more* to be *gatherers and collectors of alms* for the poor. By 5 Eliz. c. 3, the *parishioners* were to choose these collectors, and by 14 Eliz. c. 5, the appointment was to be made by the *justices*, who were also to appoint *overseers*. And the 18 Eliz. c. 3, is to the like effect. By 39 Eliz. c. 3, the *churchwardens* of every parish, and *four substantial householders*, were to be nominated yearly in Easter week by two justices, and called *overseers of the poor*. Next followed the important statute of 43 Eliz. c. 2. The portion of the 43 Eliz. c. 2, which relates to the appointment of *overseers* is—

The more ancient acts.

43 Eliz. c. 2.

Sect. 1, which enacts, "That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes to be nominated yearly in Easter week, or (a) within one month after Easter, (now by 54 Geo. III. c. 91, on 25th March, or within fourteen days after,) under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, *shall be called overseers of the poor of the same parish*; and they, or the greater part of them, shall take order, from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary or daily trade of life to get their living by."

Who shall be overseers.

Duties.

In some parishes, however, there is no churchwarden, and by 17 Geo. II. c. 18, s. 15, the overseers are empowered to execute all the authorities given to the churchwardens and overseers.

1. THE PLACE FOR WHICH OVERSEERS ARE TO BE APPOINTED.

The statute merely related in terms to *parishes* only, but the system was extended to *townships* and *vills* parochial and extra-parochial, by the 13 & 14 Car. II. c. 12, s. 21, which *recites* that "whereas the inhabitants of the counties of *Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland*, the Bishopric of *Durham, Cumberland, Westmoreland*, and many other counties in *England and Wales*, by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of the act of parliament made in the three and fortieth year of the reign of the late Queen *Elizabeth* for relief of the poor;" and enacts, "That all and every the poor, needy, impotent, and lame person or persons within every township or village within the several counties aforesaid, shall, from and after the passing of this act, be

1st. As to place for which overseers are to be appointed.

(a) See *post*, 59 Geo. 3, c. 12.

5. Overseers.

maintained, kept, provided for and set on work, within the several and respective *townships* and *villages* wherein he, she, or they shall inhabit, or wherein he, she, or they was or were last lawfully settled, according to the intent and meaning of this act; and that there shall be yearly chosen and appointed, according to the rules and directions in the said act of the three and fortieth year of Queen *Elizabeth* mentioned, two or more overseers of the poor within every of the said *townships* or *villages*, who shall from time to time do, perform, and execute all and every the acts, powers, and authorities for the necessary relief of the poor within said township or village, and shall lose, forfeit, and suffer all such pains and penalties for non-performance thereof, as is limited, mentioned, and appointed in and by the said in part recited act."

Officers of corporate towns have the authority of justice of peace.

Aldermen of London.

A parish extending into two counties, or into two liberties.

43 Eliz. c. 2, s. 8, also enacts, "That the mayor, bailiffs, or other head officers of every *town and place corporate and city* within this realm, being justice or justices of the peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdiction, as well out of sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there: (a) and that every alderman of the city of *London* within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm.

And by sect. 9, If any parish extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, that then, as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further: and every of them respectively, within their several limits, wards and jurisdictions, to execute the ordinances before-mentioned concerning the nomination of overseers, to consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages due upon their accounts; and yet nevertheless, the said churchwardens and overseers, or most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and shall duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace, or any such two of them, as is aforesaid.

By the 5 & 6 Will. IV. c. 76, jurisdiction is given to county justices in all boroughs which have not a separate court of quarter sessions under that act.

A churchwarden is *ipso facto* overseer.

To be sworn in immediately.

For what districts overseers may be appointed.

Churchwardens, it has been seen, were in effect overseers of the poor long before the 43 Eliz. c. 2, s. 1. And as the statute declares them to be such, and requires others to be *added to them* by the justices, they need no formal appointment, but are overseers *ipso facto*, by becoming *churchwardens*. And the ordinary is bound to swear in churchwardens elect, immediately upon their applying to be sworn in, notwithstanding an usage not to swear in until the first visitation after Easter. (*The King v. Middlesex*, 5 Nev. & Man. 494.)

As the right and the duty of providing for the poor is created by statutes, no other districts than those mentioned therein, viz. *parishes*, *townships*, and *vills*, can assume or be compelled to adopt the system; nor can a township or vill separate itself, and form an independent establishment for the maintenance of its own poor, unless it cannot otherwise reap the benefit of the 43 Eliz. (See *Hilton v. Powle*, Cro. Car 92; *Nicholas v. Walker*, ib. 394).

(a) This excludes the justices of the county. (*St. Mary, Taunton*, 1 Bott, 82.) But in franchises not having four justices, the appeal may be to the sessions of the county. See 17 Geo. II. c. 38, s. 5.

What is a Parish, Township, or Vill.

"A parish is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein." (1 *Bla. Com.* 3.) This, though not a very popular definition, may suffice for the present purpose. However, if a district were a parish by reputation at the passing of the 43 Eliz., and has so continued ever since, it is sufficient under this act, although it may not be a parish in the precise sense of the above definition, but the assumption of that character at any period subsequent to that time, unless it be by express act of parliament, will not constitute it a parish within the meaning of the poor laws. (See the cases last cited, and *Dean v. Linton*, 2 *Salk.* 487.) And the immemorial exercise of some of the rights of a parish, as making rates and having a chapel of its own, will not make a distinct parish without all other parochial rights. (*Rudd v. Foster*, 4 *Mod.* 157; 1 *Bott*, 25, note). (a)

In *Rex v. Severn & Arnold*, *Say.* 278; 1 *Bott*, 2, two persons were appointed overseers of the poor within the *precincts* of the Tower, otherwise called the parish of *St. Peter ad vincula*. *Denison J.*, delivered the resolution of the Court. This is not a good appointment under the 43 Eliz. c. 2, which requires them to be appointed within a parish; neither is it good within the 13 and 14 Car. II. c. 12, which says, that there shall be yearly appointed two or more overseers within every township and village respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it were a parish or vill by reputation, it might have been good (*Cro. Car.* 92, 394); but the Court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula* aid the want of this in the appointment; for in all constructions of *alias dict.* the words that go before the *alias dict.* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias dict.* will vitiate the indictment, for what precedes the *alias dict.* is the true and proper appellation. (3 *Bulst.* 296). If in this case the *alias dict.* had come after the parish of *St. Peter*, it would have done. And the appointment was quashed.

Rex v. Rufford, 1 *Stra.* 512; 1 *Bott*, 47. In the vill of *Rufford* there are divers substantial freeholders able to contribute to the maintenance of the poor, and there are no churchwardens or overseers to make a rate, and the poor are unprovided for. The vill is part of no parish, but time out of mind has been extra-parochial, without church, chapel, or parochial rights, and there never have been any overseers of the poor. By the Court: "The powers given by the 43 Eliz. to be executed in parishes, were, by the 13 and 14 Car. II. c. 12, extended to all townships and villages, whether parochial or extra-parochial, and consequently overseers might be appointed in this case."

Rex v. Denham, 1 *Bott*, 48. The Court said, "It is now a settled point that the justices may appoint overseers in an extra-parochial place, but such place must come under the notion of a town or village."

So also a place in a parish must be a township or vill, to have its own overseers distinct from those of the parish (*Rex v. Showler*, 3 *Burr.* 1391), or a reputed vill; and this must appear in an affidavit for a *mandamus* to compel the appointment of overseers. (*Rex v. J. of Bedfordshire*, *Cald.* 167; 1 *Bott*, 58.)

And if the sessions find as a fact that the place is a vill, the appointment of separate overseers is of course. (*Rex v. Ronton Abbey*, 2 *T. R.* 207.)

The island of Fowlness in the county of Essex, which is no parish, but the lands are situate in divers parishes, is made a parish for this purpose by 18 sect. of 43 Eliz. c. 2. (b)

5. Overseers.
What is a Parish, Township, or Vill.

The appointment of overseers cannot be for a Precinct.

Parish or vill by reputation may be good.

But the township or vill may be extra-parochial.

But the place must be a township or village.

Or a reputed vill.

Island of Fowlness.

(a) In citing from *Bott's Poor Law*, the number of the Case, and not the page, is denoted.

(b) As to the annexation of drained lands to a parish, see *post*.

5. Overseers.
What is a
Parish,
Township, or
Vill.

Whatever may be the distinction generally between a *town* and a *village*, the words *vill*, *village*, and *township*, are considered as denoting the same topographical division for the purposes of the poor laws; and a place so called may be such either in strictness or by reputation; but it must have been a vill in one or other of these modes, at least as early as the 13 and 14 Car. II. which, as the 43 Eliz. c. 2, has been decided to embrace only parishes *in esse* when that statute was passed, must be taken to embrace only such vills as had an existence in the year 1662, the date of the 13 and 14 Car. II. (*Vide Jacob's Law Dictionary*, tit. "*Parish*;" 1 *Bla. Com.* 114.)

What is or is not a
township or vill.

Rex v. Denham, Burr. 37; Bott, 48, S. C. Lord Hardwicke, C. J., observes, "It is certainly very hard to define exactly *what* is a township or a village; it must be left to the judgment of the Court upon the circumstances of the case stated." Lord Coke says, "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.*" (1 *Inst.* 115 b.) But in this case, as there were only two houses, that cannot amount to the notion of a town or village, and that if it had been formerly a town or village, if the houses were in fact decayed and gone, it would cease to be a town or village. Lee, J., observed, "that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that, according to the modern notion, *it is a place that has a constable*; that it ought to have at least the reputation of a town or vill; and that a vill must at least mean more than two houses."

Houses recently
built within the
precincts of a
castle not a vill.

Rex v. Standard Hill, 4 Maule & Sel. 378. Overseers were appointed for the township of Standard Hill, which was a piece of ground within the precincts of the castle of Nottingham. It was sold in 1807, and several dwelling-houses built upon it. The castle and precincts were extra-parochial, and "no part of it ever reputed to be a township or vill, or assessed to the poor, or had a constable," except some who were appointed in 1808, without the steward's knowledge, and who in 1814 gave orders that the practice should be discontinued, which was done. On a motion to quash the appointment, it was urged that as there were seventeen houses, and some in progress, and 140 inhabitants, the Court should draw the conclusion that this was a vill. Lord Ellenborough: "The immediate consequence of holding this to be a vill, for which overseers ought to be appointed, would be that overseers must be appointed for all the inns of court, and every collegiate or ecclesiastical establishment, which would work a great alteration in the laws relating to this subject. This consideration makes me unwilling to pass the ancient limits, unless warranted by positive affidavit, and therefore until I find it stated that this is a vill, I shall defer coming to such a conclusion which may lead to so extensive a consequence." Order quashed.

Where there is a
constable, it is a
vill.

Wherever there is a constable, there is a township; there may be a constable for a larger district but not for a smaller. (*Rex v. Horton*, 1 Bott, 54, per Buller, J.; 1 *Term Rep.* 376, S. C.) "It is true one parish may contain three vills; the parish of A. may contain the vills of A. B. and C. that is, when there are district constables in every one of them; but if the constable of A. run through the whole, then is the whole but one vill in law; or where there is a tithingman, there may be a vill; but if the constable run through the tithing, then it is all one vill." Per Hale, C. J., in a case where it was held that a fine of lands in A. would pass lands in B., a tithingman being appointed for B., but the constable exercising authority in B. (*Waldron v. Roscarrior*, 1 *Mod.* 78.)

Five dwelling-
houses and farms
held not a town-
ship or vill.

In *Rex v. Grafton*, (Burr. S. C. 101; 2 *Str.* 1071; 1 Bott, 49;) the manor of Grafton, an extra-parochial place, once consisting of a capital mansion-house and three keepers' lodges in the park, now disparked, and consisting of five dwelling-houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officers, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village within the statute into which a removal might be made. A rule to quash the order was granted, and afterwards made absolute without defence.

Rex v. Showler, 3 Burr. 1391; 1 Bott, 41. *Showler* and *Atter* were appointed overseers of the township or village of *Haugh*. The sessions adjudge *Haugh* to be a village or township, and confirm the appointment, and state specially that *Haugh* consists of a capital messuage, in which *Showler* and his family dwells; and of two small ancient cottages; and of one other small cottage lately built (all the cottages are let, with the said messuage and the farm thereunto belonging, to *Showler*); and of another tenement, part of the said messuage; and all of them inhabited by families; and that one of the cottages is inhabited by *Atter*, who is a day-labourer, and his family; and another of the said cottages is inhabited by another day-labourer; and another of the said cottages is inhabited by a shepherd; and the tenement, part of the capital messuage, is inhabited by a poor widow and her children; all which occupiers of the said cottages, and of the said tenement, part of the capital messuage, are under-tenants to *Showler*. The Court were unanimously of opinion, that both these orders ought to be discharged. Lord *Mansfield*, C. J., observed, "that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might, by this contrivance, withdraw themselves from contributing towards the support of the poor of their parish."

5. Overseers.
What is a
Parish,
Township, or
Vill.

One capital
messuage and
labourers' cot-
tages not a vill.

In *Rex v. Justices of Peterborough*, (Cald. 238; 1 Bott, 59;) a rule for a *mandamus* to require the appointment of overseers for the minster in *Peterborough*, it appeared that it was an extra-parochial place, containing upwards of sixty acres of ground, upon which were twenty-five dwelling-houses at least, besides poor houses of the annual value of 40*l.* at least; that these houses were inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or strangers to the cathedral, and mostly persons of fortune, who kept servants that acquired settlements therein; that the poor had been supported from some fund belonging to the dean and chapter; "that it was not a township or vill, or ever reputed so to be;" that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor, or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do. Lord *Mansfield*, "This space comprehends no more than the site of the cathedral and the area round it, and consequently was, in former times, within the sanctuary, and, as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages, without interruption, enjoyed those immunities, as *Westminster Abbey* now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also, at all times, been privileged; and a similar exemption was not questioned in *Rex v. Gardner*, Cowp. 79, with respect to that part of the court and garden ground of *Catherine Hall* in the university of *Cambridge*, which lay within the old and extra-parochial part of that foundation. Would you say that *Christchurch*, in *Oxford*, is a vill? I am not satisfied that this place is a vill, and the party applying do not even call it so." Buller, J. "As the party applying for a *mandamus* does not state, as a fact, that this place was ever reputed a vill (which, where the facts of the case do not, upon some clear principle of law, show the place to be of that denomination, the Court has holden to be indispensably necessary for the purpose of founding an application for a *mandamus*), this case falls within the case cited." Rule discharged.

The site of a
cathedral and its
area, do not con-
stitute a vill,
though there be
many houses
&c., upon it.

A vill by reputation is sufficient. (*Rex v. Eyford*, 1 Bott, 60.)

An order, appointing overseers of the "hamlet" of B., in the parish of C., is good; for it shall be intended that the place was a vill, unless it be stated to be otherwise; for "vill" and "hamlet" are, in common acceptance, used as synonymous terms. (*Rex v. Morris*, 4 T. R. 550.)

But vill by repu-
tation is sufficient.
Vill and hamlet
are synonymous
terms.

Rex v. Ronton Abbey, 2 T. R. 207. This was a case sent up by the sessions; there were only three houses, and no constable or tithing-man, nor, it seems, any church or chapel, and this passed as a vill; but there had been orders of removal to it executed, and some evidence was given of overseers

If the sessions
find as a fact that
the place is a vill,
it is conclusive.

5. *Overseers.*
What is a
Parish,
Township, or
Vill.

Extra parochial
 place become a
 township.

and other officers having formerly been appointed; upon which it was expressly found by the sessions to be a vill by reputation, which precluded all question before the Court above whether it were so or not; so that this case proves not that three houses alone make a vill, but only that if a place be found by the sessions, upon the evidence there produced, to be a vill by reputation, it may be taken to be such, though there be but three houses remaining, and no other characterizing circumstances.

An extra-parochial district may become a township by act of parliament, but in that case it cannot be treated for the purposes of settlement, &c., as having been of that denomination before the date of its creation under the act, up to which period it must be regarded as if it had been wholly uninhabited. (*Rex v. Oakmere*, 5 B. & A. 775; 1 D. & R. 427, S. C.)

Construction of
 13 & 14 Car. 2, c. 12.

Construction of Stat. 13 & 14 Car. II. c. 12.

This statute
 extends to all
 counties. (a)

In *Dolting v. Stokelane*, (Fol. 98; Fort. 219; 1 Bott, 46); it was held by the whole Court, that by reason of the words "*and many other counties in England and Wales*," the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in Wales. And in *Clifton v. Churcham*, 1 Nol. P. L. 10, Lee, C. J., said, "that so it was determined, upon great debate and consideration, in *Dolting v. Stokelane*, which case hath been ever since adhered to." (Andr. 314.)

Dividing parishes
 to secure the
 benefit of 43 Eliz.

The largeness of the parishes is expressly put forward as the ground on which, in particular parishes, the benefit of the statute of Elizabeth cannot be enjoyed. A parish cannot be legally divided for the relief of the poor, unless it cannot otherwise have the full benefit of that act. (*Bastock v. Ridgway*, 6 B. & C. 496; 9 D. & R. 585, S. C.) The question may be properly tried in a feigned issue before a jury. (*Lane v. Cobham*, 7 East, 1; *Rex v. Watson*, ib. 214; *Rex v. Newell*, 4 T. R. 266.) Speaking of the words in the statute of Charles, Buller, J., says, "The phrase, that a parish cannot reap the benefit of that statute, does not mean that it is absolutely impossible for them to maintain their own poor as a parish, for that would not be the case, even if the parish were 100 miles in circumference; but that it is inconvenient for them so to do." (*Rex v. Leigh*, 3 T. R. 748.) But the inconvenience must be real, and a mere trifling advantage which it is supposed may arise from a subdivision, will not warrant that proceeding. But where districts have maintained their poor respectively from distinct funds, even from a period subsequent to the 13 & 14 Car. II., either on account of the increase of population, or other changes having made it positively and really inconvenient to continue the union, the court of King's Bench, upon a knowledge of the facts, has directed a separation; there it is taken as decided that the parish is incapable of reaping the benefit of the 43 Eliz., and the townships or districts become entitled to separate overseers; thus

More than four
 overseers not
 decisive of the
 inability.

In *Rex v. Newell*, (4 T. R. 266,) the parish consisted of two separate districts, each of which immemorially made a separate rate, but the money when raised was blended together in one joint fund, though applied in certain proportions, and the sessions did not find it as a fact that the parish could not reap the benefit of the 43 Eliz.; it was held that the districts were not entitled to maintain their own poor separately and distinctly, though, since the year 1648, they have constantly had, in the whole, more than four overseers, and though the hamlet part has immemorially had a constable of its own. Lord Kenyon in the course of his judgment said, "The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than four overseers; but that appeared to be the case in several other parishes, on an enquiry directed to be made by Lord Mansfield, in *Rex v. Loxdale*, (1 Burr. 445.) So that though it

(a) The contrary had been previously held. (*Skellington v. Norton*, 2 Lev. 142.)

may be a very material ingredient in these cases, it is not a decisive one." (See also *Rex v. Justices of Middlesex*, 1 Bott, 39; *Rex v. Uttoxeter*, Doug. 346, Cald. 84.)

5. Overseers.

Peart v. Westgarth, 3 Burr. 1610. Upon a feigned issue, the following case was agreed on. From 43 Eliz. to 9 Geo. I., (1723), the parish of *Stanhope* had one joint appointment of overseers of the parish, and during all that time the poor of the parish were jointly relieved and maintained by general rates upon the whole parish. During that time, there were four churchwardens and four overseers, which four overseers were nominated one out of each of the four quarters in the parish, called *Forest* quarter, *Newlandside* quarter, *Park* quarter, and *Stanhope* quarter; and in each quarter there was one churchwarden and one overseer, who collected the poor's rates in the quarter wherein they respectively resided; but the money was levied under one entire assessment upon the whole parish, and carried to one general fund, and applied to the joint relief of all the poor of the parish. The parish is twenty miles in length, and eight miles in breadth. The *Park* quarter is one distinct constabulary, the *Forest* quarter one, and the *Stanhope* quarter one, and the *Newlandside* quarter consists of three constabularies, but these three constabularies compose one quarter only. In the 9 Geo. I., at the quarter sessions, it was ordered "that the several townships or constabularies of *Stanhope*, *Fosterley*, *Newlandside*, *Eastgate*, and *Westgate*, should separately maintain their own poor." From that time there have been separate appointments of overseers for each of the four quarters, and each has maintained its own poor separately, excepting that, about twelve years ago, two townships, called *Bishopley* and *Fosterley*, within *Newlandside* quarter, separated themselves from the rest of that quarter, and have ever since had separate overseers and maintained their own poor separately. Orders of removal had from time to time been made since 1729 to 1761, for the removal of poor persons from one of the quarters to another, and appeals made by one quarter against another.

Inability of a parish to have the benefit of 43 Eliz. the foundation of the right to a division.

Lord *Mansfield* said he had no doubt upon the first argument. The policy of 13 & 14 Car. II. was mistaken; it went upon a wrong principle. The divisions ought rather to be enlarged than diminished. As to the question itself, consider 1st, what was done; 2dly, upon what foundation. It ought to appear "that there was an inability in the parish to have the benefit of the act of 43 Eliz." Now here no such inability appears, but quite the contrary for a great number of years, so that there is no foundation for the division. The acquiescence under it was upon a false notion, "that the sessions had such a power," which they had not. And there is no inconvenience in setting right this wrong usage, which has obtained for forty years. In the case of *Kentish Town*, all the judges held "that the foundation of such a division of a parish must be an inability of having the benefit of 43 Eliz." Here the foundation is wanting.

Wilmot, J., also thought the larger the circle the better: therefore it would be more proper to enlarge than to lessen the divisions. The sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity. It was not made upon any appeal; but upon a motion made on behalf of some of the quarters and opposed by another. The subsequent usage for forty years cannot vary the right. For we cannot presume "that *omnia ritè acta sunt*;" because we see that it was founded upon this order of sessions, and it does not appear that the parish is so large that it cannot have the benefit of 43 Eliz. Therefore they ought to appoint running overseers over the whole parish.

Nor is a parish entitled to a separation, merely because its different districts lie each in different jurisdictions, or even counties. See *Lane v. Cobham*, *infra*, p. 18.

Situate in two counties.

Though it appears to be the policy of the law to discourage the division of parishes into separate districts, and even to promote their reunion, yet where the district is extra-parochial, or being part of a parish, it has maintained its own poor on a distinct account "time out of mind," or from a more modern date, if change of circumstances required the separation, it has a clear right to a distinct set of overseers.

5. Overseers.

Agreement by districts at the passing 13 & 14 Car. II. to separate, held proof that the parish could not reap full benefit of 43 Eliz.

Secus, an agreement having no reference to the benefit of the statute of Eliz.

Largeness of parish not the only criterion.

Districts separated at the time of 13 & 14 Car. II. may re-unite, though in two counties.

Of re-union of districts.

Separate appointments of overseers, with separate

Rex v. Walsall, 2 B. & A. 157. The two districts of which a parish consisted, had, from the 43 Eliz. down to the 13 & 14 Car. II., maintained their poor jointly, and, at the time of the passing of the latter act, agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupiers resided. In consequence of that agreement, they had ever since uniformly maintained their own poor separately, and had had separate overseers, constables, &c. The Court held, that this clearly showed that the parish, at the time of the agreement, could not reap the full benefit of the statute of Eliz., and that therefore the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now bad. It was held also, that the agreement consisted of two distinct parts, and that the invalidity of the latter part, as to rating property not situated within the district rated, did not affect the question on the former part. *Bayley*, J., observed, that *Rex v. Palmer*, 8 East, 416, only decided that where a parish has, with the consent of all its districts, re-united itself, that re-union is valid in law.

In *Bastock v. Ridgway*, (6 B. & Cres. 494; 9 D. & R. 585, S. C.), Lord *Tenterden* remarked, "that in *R. v. Walsall* the separation took place very soon after 13 & 14 Car. II. Now there could be no legal separation between 43 Eliz. and 13 & 14 Car. II. But when we find that (as soon as an act of parliament makes a separation legal, in a case where the parish cannot have the benefit of the statute of Eliz.) such a separation actually takes place, that is abundant evidence that at and even before that time the parish could not have the benefit of the statute. But this inference by no means arises where (as in this case) the agreement was made in 1753." His lordship also observed "that he did not mean to say, because the largeness of the parish is expressly mentioned in the statute, that it is the only ground by which the benefit of the statute of Eliz. is not to be had, for that benefit might be lost by the superabundant population in a district not exceedingly large." *Bayley*, J., "It does not appear by that agreement that it was in consequence of the largeness of the parish that they could not receive the benefit of that statute. In 1690 the poor rate was an entire fund, and the agreement shows that the reason for separation was private disputes, and the principal one about some donations." The Court held that the townships were not legally divided.

Lane v. Cobham, 7 East, 1; and *R. v. Palmer*, 8 East, 416. The parish of *Wokingham* is situated in two counties, part called the liberty of *Wilts*, and part the liberty of *Berks*. It appeared that at the time of the 13 & 14 Car. II., and down to the year 1773, separate overseers had been appointed for each liberty, and separate rates. That in 1773, the liberties agreed to unite, and had been united ever since. Upon this evidence, the jury found that the parish could have the benefit of the statute of Eliz. And on a mandamus to review this decision, it was held that the districts might legally re-unite, and that in the exercise of their discretion they would not interfere with the management of the poor which had certainly prevailed for thirty-two years.

The re-union by agreement of districts or townships to the collective system of 43 Eliz. is equally valid, whether the townships at the date of the statute of Car. II., maintained their poor jointly, continued so united until more than a century afterwards, and then divided; or whether from the date of the statute Car. II. until their agreement to re-unite they have been constantly separate. The Court, therefore, will not disturb by appointment of separate overseers, a re-union thus effected, after a duration of thirty years. Nor probably, though much more recent. On the other hand, though there should be affidavits on behalf of one or more townships, that the parish might now, by re-union, reap the benefit of 43 Eliz., it does not seem likely that the Court would grant a mandamus against the wish of any other of the townships, to appoint overseers for the whole parish collectively. (*Rex v. Leigh*, 3 T. R. 746; 1 Bott, 58.)

Rex v. Sir Watts Horton, 1 T. R. 374. Where one or more, but not all, of eight several and distinct townships composing a parish, have obtained a

separate appointment by *mandamus*, or have been accustomed to maintain their poor from separate funds, under circumstances authorising such separation, and the remaining townships have maintained their poor jointly, every one of them has a right to a separate appointment also, and the Court of *King's Bench* will grant a *mandamus* for the purpose; for the circumstances prove the inability of the parish to maintain its poor as a parish; that is, collectively out of one fund.

R. v. Salop, 3 B. & Ad. 910. The parish of *H.* consisted of three townships in the county of *W.* and certain townships and districts in the county of *S.* The townships in *W.* had always had their own overseers and relieved their own poor, but four overseers had been appointed for the division of the parish lying in *S.*, and rates collected and applied for the relief of the poor of that division indiscriminately. On application by a township in the latter division for a *mandamus* to the justices of *S.* to appoint overseers for that township, pursuant to 13 & 14 Car. II. c. 12, s. 21, on the ground that the parish had not enjoyed and could not enjoy the benefit of the statute 43 Eliz. c. 2, facts being also stated to show the expediency of a separate appointment.

Lord *Tenterden*, C. J.—Looking at the parish of *Hales Owen* as a whole, it is clear there never, within memory, has been one set for the townships in *Worcestershire* and one for the part of the parish lying in *Shropshire*. Then the parties applying for the rule relied upon *Rex v. Sir Watts Horton*, which has been followed up in principle by several other cases. On the other hand, a case in *Sir T. Raymond*, p. 476, was referred to in the course of the argument, where a parish was situate partly in London and partly in *Middlesex*, each part having distinct officers, making distinct rates, and passing distinct accounts before the justices of the respective counties, and the question being as to the liability to maintain children who were left chargeable to one of the divisions, it was held that each division must be looked upon as a separate parish. We have looked into that case, and we think it is no authority to show that in every case in which a parish lies in two counties, each part may be considered as a separate parish. The case happened after the statute of Charles, and probably was no more than an application of the provisions of that statute to each part as a distinct township; at all events there is nothing in it calculated to raise any reasonable doubt on the application of *Rex v. Horton* to the case now before the Court. Rule absolute.

The principle of these determinations accords with the 59 Geo. III. c. 95, respecting towns corporate or franchises, which, after reciting that various towns corporate or franchises situate within one or more parish or parishes, and not co-extensive with the said parish or parishes, have heretofore and for a long time past been separately assessed from the parish or parishes in which they are situate, for the relief of the poor, and overseers of the poor for such town or franchise have been appointed distinct and apart from the overseers of the poor appointed for such parish or parishes, and whereas such separate and distinct assessments and appointments of overseers have, in many cases, been made without sufficient authority, and yet, by reason of the long continuance of the said separation, the towns corporate or franchise cannot now be re-united to the parish or parishes in which they are situate, without manifest inconvenience and hardship: enacts, "That from and after the passing of this act, all such separation of towns corporate or franchise, from the parish or parishes in which they are situate, together with the separate and distinct appointment of overseers of the poor, shall be deemed and taken to be lawful to all intents and purposes whatsoever, in the same manner as if the said separation or division had taken place under the authority of an act made in the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the relief of the poor*: provided always nevertheless, that nothing in this act contained shall render legal or confirm any separation of a town corporate or franchise from the parish or parishes in which such town corporate or franchise is situate, in respect to the maintenance of the poor, or the appointment of overseers of the poor, in any case

5. Overseers.

funds, evidence of such inability.

Same point.

59 Geo. 3, c. 95, "for confirming ancient separation of towns corporate from parishes, in regard to the maintenance of the poor."

Separation of towns from parishes, and distinct appointment of overseers lawful.

43 Eliz. c. 2. But with respect to the poor, such separation must not have commenced within sixty years.

5. Overseers.

where it shall appear that such separation has commenced within sixty years before the passing of this act."

2. The Number of Overseers.

Must not exceed four unless by special enactment.

2. WHAT NUMBER OF OVERSEERS MAY BE APPOINTED.

By the express words of the statute there must be *four, three, or two* overseers, and *exclusive of the churchwardens*. There must not be more than four, nor fewer than two, except where the parish is subdivided into townships, in which case each township may have four, three, or two overseers appointed. In some cases, particularly in larger towns, a greater latitude is given by some special statute; but no *usage* for a greater or smaller number than the 43 Eliz. prescribes will avail against the express terms of its enactment: and if more than four be appointed, the instrument is void as to every one of the persons appointed. (*Rex v. Loxdale*, 1 Burr. 446; *Rex v. Morris*, 4 T. R. 550; *Rex v. Clifton*, 2 East, 168; *Rex v. All Saints, Derby*, 13 East, 143; *Rex v. Forrest*, 3 T. R. 38; *Rex v. Wymondham*, 6 T. R. 552.)

Rex v. Pinney and another, 2 B. & C. 322; 3 D. & R. 578; *Rex v. Catesby*, 2 B. & C. 814; 4 D. & R. 434, S.C. By 47 Geo. III. s. 2, c. 111, s. 92, it was enacted that the then overseers of *Woolwich* should continue to be overseers for the year 1807, and until two other overseers should be appointed, in the manner and at the time by law directed, to succeed them; and within one month of *Easter*, in every year, two persons, being substantial householders, should be appointed, in the manner by law directed, to be overseers. By an order, on the 25th *March*, 1823, four persons therein named were appointed overseers of *Woolwich*; and the sessions confirmed that order. A rule was obtained for quashing the order. *Abbott, C. J.*—It is a general rule of construction, that affirmative words in a later statute do not repeal a former, unless there be something wholly inconsistent in the provisions of the two statutes. Lord C. B. *Comyns*, in his *Digest*, tit. *Parliament*, R. 25, lays it down that such affirmative words do not take away a former statute, unless they in sense contain a negative. Now the statute of Elizabeth directs that the overseers for parishes shall be four, three, or two substantial householders. The local act merely directs that the then overseers should continue in office to the end of the year, and until two others should be appointed, and that two others should be annually appointed. These words do not, in sense, contain a negative, nor is there any inconsistency between a provision authorizing the appointment of four, three, or two overseers, and another directing the appointment of two. The latter statute requires absolutely that two shall be appointed, but it does not say that more than two shall not be appointed. That being so, I am of opinion that the provision of the statute of Elizabeth, as to the appointment of overseers, is not repealed by the local act, and that the order of justices was right." Rule discharged. (a)

Whatever the whole body may do may be done by a *majority*. *Doe d. Grundy v. Clarke*, 14 East, 488; *R. v. Beeston*, 3 T. R. 592.

3. Who to be Appointed, &c.

A., B., and C., carrying on trade in partnership, had a dwelling-house, yard, and premises in a parish in London; all the partners were in the habit of frequenting the premises daily for the purpose of business, but none of them resided there. The dwell-

3. WHO MAY BE APPOINTED, AND HEREIN OF EXEMPTIONS.

By the statute "*substantial householders there*" are to be the overseers of the said parish."

Rex v. Poynder, 2 D. & R. 258; 1 B. & C. 178; 1 D. & Ryl. Mag. Ca. 247. This was an indictment for refusing to take the office of overseer of *St. Ann, Blackfriars*, and the only question was, whether the defendant was a householder within the 43 Eliz. c. 2. The defendants, *W. Hopson* and *Poynder* the younger, were lime-merchants and co-partners, and owners of a dwelling-house and premises in *St. Ann*, but neither of them slept there, the defendant *Poynder* the younger dwelling at *Clapham*, and *Hopson* in the parish of *Tottenham*. One *Medlicott*, who managed the business for them, resided in the house. The rent, rates, and taxes, were paid by the firm.

(a) See *Plowden*, 112, 113; and *Rex v. Burridge*, 3 Peere W. 461.

Each of the partners frequented the premises daily, for the purpose of business, and the defendant had once voted at an election of a lecturer, which was a privilege belonging to resident householders. A verdict was found for the crown, and on a motion for a new trial *Rex v. Hall* was cited, 1 B. & C. 123; 2 D. & R. 241; 1 D. & Ryl. Mag. Ca. 232, 259, S. C.; in which the Court of K. B. decided that one of several partners resorting daily for the purpose of business to a house rented by all, but which was inhabited by their servant, was a householder in the place where the house was situate, so as to qualify him to be a commissioner of a court of requests. The object of the statute in that case was to confer a privilege. It was also urged, that as the defendant was a householder in *Clapham*, he might be called upon to serve in two places at the same time, an office requiring personal attendance. *Abbott, C. J.*—When a similar question was under our consideration last term, we were not insensible that a distinction might be attempted to be made between those cases where the legislature intended to confer a benefit, and others where it intended to impose a burden. We were of opinion that there was no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases. We have no doubt in this case that the defendant is a householder within the meaning of the statute of Eliz. It was in evidence that he had enjoyed one of the privileges of a resident householder, for he had voted for a lecturer, which was a privilege belonging to resident householders only. *Bayley, J.*, observed, that a large number of houses in the metropolis are merely occupied by clerks or servants, but that is no reason why their owners should not be called upon to discharge those duties which fall upon other householders.—*Holroyd, J.*, and *Best, J.*, concurred. (a)

Donne v. Martyn, 8 B. & C. 62; 2 Man. & R. 98, S. C. On the interpretation of a local act, whereby the aldermen were authorized to appoint "some substantial inhabitant" collector of rates, *Bayley, J.*, observed: "The word *inhabitant* may mean either occupier or resiant. The latter is the proper sense when it is used to denote persons, or when a personal (not a pecuniary) charge is to be imposed. *R. v. Adlard*. (a) Here a personal service is imposed. The duties are to be performed by personal attendance within the ward. It is more convenient that the duties should be executed by 'a resiant.' " The facts were similar to those in *R. v. Poynder*, but the Court held that he was not bound to perform this office.

Rex v. Weobly, 2 Str. 1261; 1 Bott, 5. The defendants were appointed overseers of *Weobly* by the style of *principal* inhabitants. It was moved to quash this appointment, because they were not described to be *substantial* householders. *Et per Curiam*.—The justices must certainly pursue the power given them, which is to appoint substantial householders, which is a much more limited description than inhabitants; for a man may be an inhabitant, and a principal inhabitant, and not be a householder; so this appointment is void.

The word "*substantial*" must be taken generally in its proper sense, but it is so far relative, that where there were no other persons to serve, two day-labourers with some land annexed to their cottages, of whom one only was a proprietor, and the other a farmer's servant, were held to be competent overseers, although the appointment of such men might be improper "in a place where there are a great many opulent farmers." (*Rex v. Stubbs*, 2 T. R. 406.) And the phrase "*substantial householders*" has no reference to sex; although men are more proper to be appointed than women, where there are a sufficient number of men qualified; yet a woman may be appoint-

5. Overseers.
3. Who to be appointed, &c.

ing house was inhabited by a clerk, who managed the business for them, but the rent, rates, and taxes, were paid by the firm: Held, that each of the partners was a householder liable to serve the office of overseer.

Meaning of term "inhabitant."

The Court will quash the appointment as to those who are not substantial householders.

Who may be appointed.

Women.

(a) In *R. v. Adlard*, 4 B & C. 772; 7 D. & R. 340, S. C., it was held that a person is not liable to perform the office of constable unless he is *resiant*. And see the able judgment of the chief justice as to distinctions between inhabitants for

purposes of pecuniary charge and for offices requiring *personal service*. Alluding to the poor law, the learned judge observed, "I have not noticed the poor laws, because the occupiers are mentioned in the statute as well as inhabitants."

5. Overseers. ed where the necessity of the case requires it. (*Id. ibid.*; 5 Burn, tit. "Women.")
3. Who to be appointed, &c. The appointment of persons resident only for a part of the year, is discouraged by the courts; but such persons seem eligible in cases of necessity. (*Rex v. Moor, Carth.* 161; 1 Bott, 13.) And the justices are to determine where this necessity exists, being "invested with a discretionary power of approbation." (*Rex v. Stubbs*, 2 T. R. 395; *Rex v. Gayer*, 1 Burr. 245.)
- Occasional residents. Exemptions.—The following classes are exempt from serving this office, and the justices therefore are not at liberty to make their nomination from among any of these persons.
- Peers. 1. Peers, by reason of their dignity. (1 *Gibs. Codex*, 215.)
- Members of parliament. 2. Members of parliament, by reason of their privilege. (*Ibid.*)
- Justices of peace. 3. Justices of the peace, as having the controul of overseers' accounts. In *Rex v. Gayer*, (1 Burr. 245,) the sessions, upon appeal, quashed the appointment of *Gayer*, because he was a justice, &c.; and *King's Bench* supported the judgment, upon the ground that the sessions had the same latitude of discretion as the two justices had. And in *Rex v. Pateman*, (2 T. R. 779,) Lord *Kenyon* said, "in *Rex v. Gayer*, it seems to have been agreed that the office of justice of the peace and overseer are incompatible, because the accounts of the latter were subject to the control of the former. The court, in *R. v. Gayer*, gave no judicial opinion upon the point." (a)
- Aldermen of London, being justices. Aldermen of London, (who are justices of the peace,) for the same reason. (*Rex v. Abdy, Cro. Car.* 585; 1 Bott, 8.)
- Practising barristers and attornies, and officers of courts. 4. Practising barristers and attornies, (*Gerard's case*, 2 Sir W. Bl. 1123,) and officers of the superior courts, are privileged, though there be a special custom for every parishioner to serve, according to the situation of his house. (*Rex v. Prouse, Cro. Car.* 389; *et vide* 8 T. R. 379, note (a).) An officer of the Court of Exchequer, (*Cawthorne v. Campbell*, 1 Anst. 205, 216; 8 T. R. 376.)
- The clerk of the treasury of the Court of Common Pleas is bound to a personal attendance on his duties, and, therefore, is not compellable to serve the office. (*Ex parte Jefferies*, 6 Bing. 195; 3 M. & P. 450, S. C.) And these officers may be relieved by writ of privilege, (*id. ibid.*; 8 T. R. 377; 1 Chan. Rep. 196.)
- Physicians. 5. The president, commons, and fellows of the college of physicians, (whose exemption, however, extends no further than the city of London,) but apparently no other physicians. 32 Hen. VIII. c. 40. (See 1 Bott, 13.)
- Clergymen. 6. Clergymen, though without cure of souls, by reason of their order. (*Anon., Gibs. Codex*, 215; 6 Mod. 140.) (b)
- Dissenting ministers. 7. Dissenting ministers, taking the oaths and subscribing the declaration and articles pointed out by 1 W. & M. c. 18, although they be also engaged in a trade. 1 W. & M. c. 18, s. 11; 52 Geo. III. c. 155, s. 9. (*Kenward v. Knowles, Willes*, 463; 1 *Gibs. Codex*, 215.)
- Churchwardens. 8. Churchwardens during their continuance in office. (*Rex v. All Saints, Derby*, 13 East, 143.)
- Freemen of the surgeons in London. 9. Freemen of the company and corporation of surgeons, established by 18 Geo. II. c. 15, who have been examined and approved pursuant to the rules of the company, so long as they exercise surgery and no longer. 18 Geo. II. c. 15, s. 10.
- Apothecaries. 10. Apothecaries using their art in, or within seven miles of London, being free of the apothecaries' company (recognised by 6 & 7 W. III. c. 4),

(a) It seems to have been considered both by the bar and the bench, "that if the two offices were incompatible the consequence would be that the party would be discharged from that of overseer, as having been disqualified or exempted, and not from that of justice of peace as being vacated by the appointment of overseer." *Parke, J.*, in giving

the judgment of court in *Rex v. Patterson*, 4 B. & Ad. 23; 1 Nev. & M. 612, S. C.

(b) This point was not decided, for three judges being against C. J. Holt, who thought the clergymen not exempt, it was "to be stirred again." The quotation from *Gibson* relates to the office of churchwarden.

and having been examined and approved, and all persons using the said art in any other part of *England, Wales, or Berwick-upon-Tweed*, having served an apprenticeship of seven years according to the stat. 5 Eliz., so long as they exercise the art and no longer. 6 & 7 W. III. c. 4, s. 2, 3.

11. The sessions on appeal quashed the appointment of *Gayer*, because he was an acting justice, and a lieutenant of marines on half-pay, and there were other substantial householders. Lord *Mansfield* said, "it was not necessary to consider the general question of the incompatibility of the offices. The justices have a discretionary power, and although they have stated two reasons for their judgment, yet it did not follow that they considered either of these offices as an exemption or a disability." No opinion was given on the general question. (*Rex v. Gayer*, 1 *Bott*, 9; 1 *Burr*. 245.)

12. Officers of the customs, tide-waiters, exchequer, and all other revenue officers, both by reason, it should seem, of the incompatibility of the functions, and by reason of the exemption granted them by the king, who has power to exempt by patent, charter, or otherwise, not only from offices under the crown, but even from parochial offices. (*Rex v. Warner*, 8 *T. R.* 375; *Raymond v. St. Botolph's, Aldgate*, 2 *Chan. Rep.* 196; *Cawthorne v. Campbell*, 1 *Anstr.* 216. See also *Rex v. Routledge*, *Doug.* 531.) But these exemptions granted by the prerogative were available only where there were a sufficient number of persons to serve the office, without recourse to the individuals so exempted; (8 *T. R.* 379, note (a); *Rex v. T. Clarke*, 1 *T. R.* 686;) but by 7 & 8 Geo. IV. c. 53, officers of customs and excise are absolutely exempt.

13. Yeomen in ordinary of the king's body guard. (*Ibid.*; *Rex v. Great Marlow*, 2 *East*, 245.)

14. Serjeants, corporals, drummers, and privates of militia, from the time of their enrolment until they be regularly discharged; but there is no exemption enacted for the officers of that force. 42 Geo. III. c. 90, s. 174.

15. Captain in the guards cannot claim his privilege of attending on the king when appointed constable. (*Hawk.* 100.)

16. Dissenters scrupling to take the office, on account of the oaths or other matters required by law, repugnant to their peculiar religious opinions, are permitted to execute it by deputy, approved by such persons and in such manner as the principal should have been approved. 1 W. & M. sess. 1, c. 18, s. 7.

17. An immemorial custom to be exempted from all office, will exempt a person from this office, though it is an office created within legal memory. (See *Littledale, J.*, in *Farr v. Hollis*, 9 *B. & C.* 338.)

18. Visiter of poor-house is exempt from all parochial offices, 22 Geo. III. c. 83, s. 10.

The exemption from parish and ward offices, given by the 10 & 11 W. III. c. 23, and 58 Geo. III. c. 70, to prosecutors of felons to conviction, no longer exists, those statutes having been repealed by 7 Geo. IV. c. 64, and 7 & 8 Geo. IV. c. 27.

Quære, if younger brothers of the Trinity-House are exempted. (See *Charter King v. Clarke*, 1 *Term Rep.* 679; *Steer's Par. L.* 331.)

Subject to these exemptions, the justices of the peace may appoint such householders as they in their discretion think meet. And they are no longer limited of necessity to householders residing in the parish or township; for the 59 Geo. III. c. 12, s. 6, has provided, "that it shall be lawful for his majesty's justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, to appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or where there shall be no church or chapel, shall be resident within one mile from the boundary of such parish, to be an overseer of the poor thereof, although the person so to be appointed shall not be a householder within the parish of which he shall be so appointed an overseer of the poor; and it shall be sufficient, in every such appointment, to describe the person ap-

5. Overseers.

3. Who to be appointed, &c.

Officers in the army.

Officers of the customs, tide-waiters, revenue officers

Yeomen in ordinary.

Non-commissioned officers, &c. of militia.

Captains in the guards.

Dissenters.

Customary exemptions.

Visiter of poor house.

Other exemptions.

Persons residing out of parish.

Power to appoint non-resident overseers.

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pointed by his name and residence, provided that no person shall be appointed to, or be compellable to serve the office of overseer of the poor of any parish or place in which he shall not be a householder, unless he shall have consented to such appointment."

4 & 5. When and
by whom to be
appointed. (a)

4 & 5.—AT WHAT TIME AND BY WHOM TO BE APPOINTED. (a)

The 43 Eliz. provided that the overseers should be nominated early in *Easter* week, or within one month after *Easter*; but the 54 Geo. III. c. 91, provides, that the appointment of overseers of the poor shall in every year be made *on the 25th day of March, or within fourteen days next after the said 25th day of March*, in all and every the same manner as directed by the statute of Eliz. to be made in *Easter* week. As to the continuance in office till successor appointed, (b) *post*, 28.

An appointment
on a Sunday is
improper.

Any other day is more proper than Sunday to appoint overseers; though the circumstances of the officers being required by the 43 Eliz. to meet once a month on a *Sunday*, raises a doubt whether an appointment made on a *Sunday* may not be valid. Unless it be shown to have been made fairly, the fact of its having been made on a *Sunday* will incline the Court of K. B. against it, as affording a presumption that it was clandestine. (*Rex v. Clerkenwell*, Fol. 4; *Rex v. Butler and others*, 1 Bla. Rep. 649; *Rex v. Overseers of Bridgewater*, Cowp. 139.)

It has been repeatedly decided, that although ministerial acts may be performed on a *Sunday*, judicial acts done on that day are void: and the appointing overseers is clearly a judicial act. (*Waite v. Stokes*, God. 280; *Swan v. Broome*, affirmed on a writ of error in parliament, 3 Burr. 1595; *Rex v. Forrest*, 3 T. R. 78. See 1 Chitty's Col. Stat. tit. *Sunday*.)

Where two or
more appoint-
ments are made
on the same day,
the first is valid.

Rex v. Serle, 1 Bott, 24. There were in this case two sets of overseers certified on the same day. It was objected that both of the appointments were for this reason void: as where two informations on a penal statute are made on the same day, both are void. (*Hob. 209.*) *Sed non allocatur*; for although in some judicial proceedings the law considers the day as entire, and knows no fraction; yet in a bond and release, and many other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders; and in *R. v. Great Marlow* it was held that the appointment which is prior in time is good, and the second void. The magistrates having made their appointment, their jurisdiction in that respect is at an end. (*Rex v. Great Marlow*, 2 East, 244.)

And cannot be
changed or super-
seded, except on
appeal to the
quarter sessions.

And the second appointment is invalid, though made only in consequence of a reasonable claim of exemption by the first appointees; unless where the first appointees are regularly discharged by the sessions on appeal, in which event it seems that the magistrates may constitute others in the place of those so discharged: for it then stands as if the full number had not been appointed at first, in which case the justices have jurisdiction to make a supplementary appointment, and the lapse of the fourteen days after the 25th of *March* does not, it is conceived, take away that jurisdiction. (*Rex v. Great Marlow*, 2 East, 244. See *Rex v. Morris*, 4 T. R. 550.)

(a) The 43 Eliz. c. 2, terms the investing a person with authority as overseer, a "*nomination*;" the 54 Geo. III. c. 91, calls it an "*appointment*." The magistrates alone can by law make the nomination or appointment, and no usage can entitle the parishioners to elect them. (3 T. R. 138, *post*, 26.) However it is usual for the magistrates to appoint the overseers out of a list selected by the parishioners assembled in vestry and to take those placed at the head; and under

the 59 Geo. III. c. 12, s. 6 and 7 (*post*, 32, 33), the inhabitants are to select non-resident and assistant overseers, and whom the justices must appoint.—N. B. The acting as overseer is *prima facie* evidence that the party has been legally appointed. (*Governor of Bristol v. Wait*, 6 Car. & P. 595.)

(b) Whether the overseer virtually continues in office until successors have been appointed, and can make rates, see *post*, 28.

Rex v. Sparrow, 2 Sess. Ca. 140; 2 Str. 1123; 1 Bott, 34. The *mandamus*, in obedience to which the justices had appointed overseers, was issued after the month after *Easter* was expired, and it therefore appeared that the appointment was not within the month after *Easter*. Lee, C. J., (who delivered the opinion of the Court,) "As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, for it would subject the parish to very great inconveniences for a thing which it is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.*, but that doth not make such appointment void. Were it the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute^(a) is only directory, and a penalty inflicted on the justices for not following such directions."

5. Overseers.
4 & 5 When
and by whom to
be appointed.

If the appointment be made after the time limited it is not therefore void, the act being merely directory.

The appointment is to be made *under the hand and seal of two or more justices*, that is, out of quarter sessions; for the quarter sessions have no power to make it, as they have the determination of appeals against the appointment. (*Rex v. Flag and Chilmerton*, 1 Sess. Ca. 260; Fol. 7; 1 Bott, 21.)

Sessions cannot appoint overseers, because appeal is given.

If a parish is partly within a corporate jurisdiction and partly without, though all the overseers, when appointed, may act indiscriminately for the whole parish, yet the original appointment should be made by four justices, two for the part within the county at large, and two for the part within the corporate jurisdiction. (1 *Nol. P. L.* 45.)

Where the parish is part within and part without a corporation.

The overseers may be appointed by different instruments. (*R. v. Morris*, 4 *T. R.* 550.)

Rex v. Houlditch, 1 Bott, 4. Two justices of *Surrey* had made an appointment of overseers for the parish of *W.*, but it was not stated that the parish of *W.* was in the county of *Surrey* (according to the fact), or in any other county, and the Court held the order bad for this reason.

Must show the county.

In some of the ancient statutes, not now in force, as particularly the 22 Hen. VIII. c. 12, the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statute, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which the statutes intended; and consequently it cannot be necessary to set forth now that the justices *are in or near the division*.

Origin of term "Division."

In *Rex v. Great Marlow*, (2 *East*, 244,) it is said that the justices should be together when the appointment is made.

6. PENALTY ON JUSTICES FOR NOT APPOINTING OVERSEERS, &c.

By 43 Eliz. c. 2, s. 10, if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress by warrant from the sessions.

6. Penalty on Justices, &c.

As the penalty is required to be levied by the *churchwardens and overseers*, or one of them, there should be a *mandamus* to make the appointment, and the penalty attaches for the omission to appoint at the time required.

The forfeiture being imposed upon *every justice of the division*, proceeds (it is said) upon the supposition of the justices being obliged to divide; (see *supra*;) for in that case the appointment was to be by the justices in or near the division, and not otherwise; but now the justices at large are all equally concerned: and therefore it seemeth, that this penalty cannot now be

(a) Same principle adopted in the interpretation of a local act relating to the appointment of guardians. (*Rex v. Mayor of Norwich*, 1 B. & Adol. 310.)

5. *Overseers.*
6. *Penalty on*
Justices, &c.

levied on the justice of any particular district, but the more reasonable construction is, that all are liable. The language of the 43 Eliz. c. 2, is plainly to this effect; see *Rex v. Price, Cald.* 305; *Rex v. Skinn*, and *Rex v. Baker*, 1 *Bott*, 527, 528; *Rex v. Grose, Comb.* 289; *Rex v. Woodsterton*, 1 *Bott*, 464; *St. John v. St. John, Hob.* 78.

7. *Mode and*
Forms of Appoint-
ment.

7. MODE AND FORMS OF APPOINTMENT.

In considering the mode of appointing, and the form and execution of the instrument by which such appointment is authenticated, it may be observed that the *churchwardens* require no specific appointment by the justices in order to give them the authority of overseers; for they become so by 43 Eliz. *in virtue of their office of churchwarden*. But the other overseers become so by specific appointment of the justices; and no usage, however ancient, will entitle the parishioners to elect them. (*Rex v. Forrest*, 3 *T. R.* 138.)

With a view to the selection of proper persons for the office, two justices ought to issue a *precept* to the high constable, directing him to require the petty constables to enjoin all the overseers within their respective constablewicks to deliver in a list of qualified inhabitants within a certain time. The form of precept of warrant and proceedings thereon will be found in the Appendix.

The appointment must be in writing under the seals of the justices. (*Rex v. Arnold*, 1 *Str.* 101.) See the form of appointment in Appendix.

Parts of appoint-
ment considered.

County.

The name of the county or other smaller jurisdiction for which the justices act should be set forth in some part of the order, that the parish or township for which the appointment is made may appear to be within their jurisdiction; for those who act under a jurisdiction given by act of parliament must show that jurisdiction, since, in a matter of jurisdiction, the Court will intend nothing. (*Rex v. Holbeck in Leeds, Burr. Sett. C.* 198; *Rex v. Stepney, Burr. Sett. C.* 23; *Rex v. Chilvers Coton*, 8 *T. R.* 178; *Rex v. Houl-ditch, ante*, 25.)

Number of jus-
tices.

The act requires that the appointment shall be by two justices at least: the number, therefore, must be shown, that the appointment may appear to have been made by a competent authority: however, if there be more than one *signature*, the omission of the number in the body of the order would not vitiate an appointment thus *prima facie* made by more than one justice.

Must show they
are justices.

But it would be insufficient for them to say, *We do hereby nominate*, without describing themselves as justices; for then there would be no jurisdiction apparent. And this defect will not be cured even after confirmation of the original instrument on appeal, by calling them justices in the order of sessions: as they might have been justices at the time of making the order of sessions, and yet not at the time of making the original instrument. (*Walton v. Chesterfield*, 5 *Mod.* 322; *Rex v. Woodford*, 1 *Bott*, 434.)

Of the peace.

It seems also insufficient to say merely *justices of the county*, without stating them to be of the *peace*, though the words "of our lord the king" may be omitted without prejudice. (*Haw. P. C. B.* 2, c. 8, s. 32; title *Justices of the Peace*, Vol. III.) And where the appointment is by magistrates acting for a limited jurisdiction, the justices should show precisely on the face of the order to what liberty they belong. (*Rex v. Dobbyn*, 2 *Salk.* 474.) But they need not describe themselves as *dwelling in or near* the parish or division. (*Rex v. Sparrow*, 2 *Sess. Ca.* 140.) Nor is it now strictly necessary that it should be stated that one of them is of the *quorum*; but it is still requisite that one of them *in fact* be of the *quorum*, except where there is but one justice of the *quorum* in the whole jurisdiction, in which case the acts of two justices are valid, though neither be of the *quorum*. (See 26 Geo. III. c. 27; 7 Geo. III. c. 21; and 4 Geo. IV. c. 27. See the term *quorum* explained, *ante*, Vol. II. title "*Justices*.")

Of quorum.

Appointments
may be by sepa-
rate instruments.

Though not indispensable, the most eligible way is to appoint all the overseers by the same instrument; and this is the customary mode of proceeding. However, although there must be more than one overseer appointed for a

district, there is no law that says there shall be an appointment of two or more overseers by one instrument. (*Rex v. Besland*, 1 Bott, 26; *Rex v. Morris*, 4 T. R. 550; *Rex v. Clifton*, 2 East, 168.) If more than four be appointed, the instrument is invalid as to every one of the appointees. (*Rex v. Wymondham*, 6 T. R. 553.)

5. Overseers.
7. Mode and forms of appointment.

The old form describes the appointees as *being substantial householders of and in the parish* (or township,) and it is proper to pursue this form where they are in fact resident within the parish or township, and their description as being *substantial* must be inserted in the body of the instrument, for so to describe them at the foot merely will not suffice. (*Rex v. Weobly*, 2 Str. 1261.) But if any one of the overseers appointed is not such a householder, but is a householder resident out of the parish or township, (59 Geo. III. c. 12, s. 6 & 35, *ante*, 23,) it is sufficient to describe the person appointed by his name and residence. In the appointment, "*principal inhabitants*," instead of substantial householders, is an insufficient description. (*Rex v. Weobly*, *Stra.* 1261.) It is proper too to say, *householders in the parish of E.*, or if the name of the parish, and of that parish only, have occurred before in the same instrument, then at least to say *householders there*. (*Rex v. Weobly*, *supra*.) A parish must be called a parish, and a township must be called a township, or a village, those being the terms used by the statute; or, which is in common acceptation synonymous, a hamlet or vill. (*Rex v. Morris*, 4 T. R. 550.) These descriptions cannot be supplied by intendment, and are so strictly required, that the order will be void if the parish or township be designated as such only under an *alias*, as the precinct of the *Tower*, otherwise called the parish of *St. Peter ad vincula*. (*Rex v. Severn and Arnold*, *Say*, 278.) Where the appointment is for a township, it is not sufficient that the overseer appointed be a householder in the parish of which that township is a district; he must also (a) be a householder in that particular township: but if he be described in the appointment merely as a householder in the *parish*, he shall be intended a householder in the vill for which he is appointed. (*Rex v. Morris*, 4 T. R. 550; 1 Bott, 6.)

Substantial householders of the district.

Of parish, &c.

As the 59 Geo. III. c. 12, s. 6 & 35, provides that no out-dweller shall be appointed, unless he shall have consented to such appointment, it seems proper to add, after naming and describing him, "who has consented to this appointment," by way of showing the jurisdiction.

If an out dweller.

The persons are to be described as "*Overseers*," and where persons were appointed to set the poor to work, &c., mentioning the several duties in the act, but were not in express terms appointed *overseers*, the appointment was quashed. (*Rex v. St. George*, *Fort.* 320; 1 Bott, 2.)

Must be styled "overseers."

It is usual to state that they are appointed *together with the Churchwardens thereof*. These words, however, are not essential; for "when overseers are once legally appointed, they are by operation of law joined with the churchwardens of the parish for which they are appointed." (*Rex v. Searle*, 1 Bott, 1.)

Together with churchwardens.

If the whole number has not been appointed by the first instrument, the justices may, it seems, add the rest by one or more supplementary appointments. (*Rex v. Besland*, 1 Bott, 21; *Rex v. Morris*, 4 T. R. 550.)

Supplementary appointment.

The words "*For the present year*," are proper at whatever period the appointment is made, the form in this respect being construed to signify, from the present time till the next season allowed by law for the appointment of overseers; and this is so, though "at this present time" the proper period has gone by; for the year here means the overseers' year. (*Rex v. Sparrow*, 1 Bott, 34; *Rex v. Helling*, 3 Burr. 1905.) The following forms have, on the same construction, been sustained by the Court: "for this present year, 1766." (*Rex v. Helling*, *ibid.*) "For a whole year." (*Rex v. Great Marlow*, *Fol.* 5; *Rex v. Jones*, 1 Bott, 35.) "For one year next ensuing."

For what time.

(a) This was before 59 Geo. III. c. 12.

5. Overseers.
8. Mode and
forms of ap-
pointment.

Justices must
meet and concur.

(*Rex v. Burder*, 4 T. R. 778.) "For one year next ensuing the date hereof."
(*Rex v. Stubbs*, 2 T. R. 395.)

It has been considered requisite, that the signing and sealing of the justices should be in each other's presence; for the function is not merely ministerial, like the allowance of a rate, but judicial; and the magistrates ought therefore to confer, and the result of their conference should be the ground of their determination, according to the general rule, that where a statute requires the concurrence of two magistrates, they should both act together. (*Rex v. Arnold*, 1 Str. 101; *Rex v. Great Marlow*, 2 East, 244.) But from the analogy of a more recent case, upon a warrant signed by commissioners of bankrupts, it may be inferred that the rule is satisfied if the magistrates have in fact duly conferred together and agreed what shall be done, leaving the acts of signing and sealing to be performed by them asunder at a subsequent time. (*Battye v. Gresley and others*, 8 East, 327.)

8. Appointment of
fresh Overseer in
case of Death,
&c.

17 Geo. 2, c. 38.
On an overseer's
dying or becoming
insolvent, two
justices to choose
another.

Overseer remov-
ing shall deliver
his accounts to
the churchwar-
dens, &c.

Executors of over-
seers to account
in 40 days.

Continuance in
office.

8. APPOINTMENT OF FRESH OVERSEER IN CASE OF DEATH, REMOVAL, OR
INSOLVENCY, AND OF THE DURATION OF OVERSEERS' OFFICE.

The 17 Geo. II. c. 38, s. 3, enacts, "That if any such overseer shall die, or remove from the place for which he is appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed: and if any overseer shall remove as aforesaid, he shall before such removal deliver over to some churchwarden or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some churchwarden or other overseer of the same place; and shall pay out of the assets left by such overseer, all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied."

Overseers, who continue solvent and resident, remain in office until the arrival of the period limited for the appointment of their successors. (*Rex v. Sparrow*, 1 Bott, 34.) But not longer, even though no successors be appointed; nor, as it seems, does the authority even of the churchwardens, as overseers, continue beyond the expiration of the overseers' term, though "liable to be revived by the appointment of new overseers, if the churchwardens continue in office beyond the overseers' regular year." (*Vide* 1 Nol. P. L. p 59.)

9. Enforcing or
Avoiding Ap-
pointment.

Mandamus to
appoint.

Indictment for
not acting.

9. MEANS TO OBTAIN AND TO ENFORCE OR AVOID AN APPOINTMENT, AND
OF APPEALS.

If the magistrates will not make an appointment within the proper time, a *mandamus* may be obtained from the Court of *King's Bench* to compel them.

If however the justices have made a valid appointment, and the parties refuse to take the office upon them, it may be *enforced* against them by *indictment*. (a)

(a) The person is overseer completely by the appointment under the hand and seal of the magistrates, until upon appeal the sessions have allowed his excuse, or the court of *King's Bench* have pro-

nounced his appointment void; but its invalidity seems a good answer to an indictment, and may be taken advantage of by demurrer, where its insufficiency appears on the face of the indictment

The district of *Borough Fen* is extra-parochial. It contains a considerable population; and it had been for some time the practice for the inhabitants to support the poor requiring relief, who were resident among them, by rates, &c. Overseers had been in several instances appointed, who discharged the ordinary duties of that office. But the liability of the inhabitants within the district to pay rates for this purpose being at length disputed, the magistrates appointed overseers, and a motion was now made in full Court for a *certiorari* to bring up such appointment, for the purpose of moving that it be confirmed, and thus obtaining the decision of the Court, whether, under all the circumstances, overseers could be legally appointed for the district. Both parties were anxious for, and ready to abide by, the judgment of the Court; and a note in 4 *Burn's Justice*, 26, was relied upon, which says, "The law has likewise permitted a confirmation of the appointment by the Court of *King's Bench*, on a motion to that effect, when it is brought up by *certiorari*;" and *Rex v. Standard Hill*, 4 M. & S. 382, was also referred to. The Court, however, said that they were not aware of any instance in which such an application had been granted with a view to confirm the appointment, though there were many cases in which an appointment of overseers had been moved into this Court for the purpose of quashing it, as was done in *Rex v. Standard Hill*, to which reference had been made; the rule was therefore refused. (*Rex v. Justices of the liberty of Peterborough*, Trin. K. B. 1830; *Steer's Par. L.* 623.)

5. Overseers.
9. Means to obtain an Appointment, &c.

K. B. will not confirm an appointment.

When the appointment is void, the objection to it may be taken on an indictment for refusal to take the office, or in an action for distraining under a rate made by such officers. The appointment may be directly impeached by appeal either by the overseers themselves, or by any of the parishioners. (*Hinton v. Pawle*, Cro. Car. 92; *Lane v. Cobham*, 7 East, 1; *Rudd v. Foster*, 4 Mod. 157; *Tracy v. Talbot*, 2 Salk. 532.)

Resisting appointment.

An appeal was given against the appointment itself, by 43 Eliz. c. 2, s. 6, which provides, that if any person shall find himself aggrieved by any act done by the said justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties. (*Rex v. Great Marlow*, 2 East, 244.)

Appeal against appointment.

The 17 Geo. II. c. 38 s. 4, gives an appeal to the party grieved by any rate, or by overseer's accounts, or by an act done by the overseers, or by any justices, and in two cases relating to a poor rate, and one to the accounts of overseers, it has been decided that in those cases this provision of Elizabeth was repealed; and the appeal must in all cases be to the next quarter sessions after the party is aggrieved. (*Rex v. Coode*, 1 Bott, 290; *Rex v. Micklefield*, 1 Bott, 291; *Rex v. Worcester*, 5 M. & S. 457.) It may be doubtful if this applies to the appointment of overseers.

The appeal may be by any parishioner. (*Rex v. Forrest*, 3 T. R. 38.)

By the words, the "next sessions," (a) the next "possible sessions" are intended. (See *Rex v. Justices of Sussex*, 15 East, 207; *Rex v. Justices of Essex*, 1 B. & Ald. 210.) It is advisable for the appellant to serve each of the justices who have made the appointment, and each of the other parish officers with whom he is nominated to act, with a copy of the notice of appeal, containing the grounds of his appealing, which must be done on or before the last day allowed for notices of appeal, by the practice of the sessions for the county where the case is to be heard. If the appointment were made by persons who were not justices, no appeal is necessary, for that is a nullity; but if the party do appeal in such case, and call the persons in question in his notice by the title of justices, he concludes himself, and cannot be heard to urge that

Appointments by persons acting as justices, but not being such, a nullity.

itself. (*Rex v. Pardy*, 1 Bott, 380; *Rex v. Burder*, 4 T. R. 778.) It would probably be necessary on such an indictment to prove that he had received notice of his appointment: for such notice is requisite even to warrant a conviction before two justices in penalties under 43 Eliz. for neglect of his office,

where notice seems the less important, inasmuch as such a conviction must allege the defendant to have accepted the office, which implies that he must have had notice. (*Rex v. Harman*, 1 Bott, 376.)

(b) See Vol. I. title "Appeal," as to what are "next" sessions, and *post*.

5. Overseers.

9. Means to obtain an Appointment, &c.

On appeal against order of removal the appointment for an extra-parochial place may be questioned.

Appointment questioned in distress in poor rate.

Certiorari.

An appointment of overseer removed into the court of B. R. by certiorari.

Question, whether a township or vill, without appealing to the quarter sessions.

Mandamus to appoint.

they are not so; though an appointment by persons not justices is void *ipso facto*, without appeal, yet, where the effect of jurisdiction is merely that neither of the justices is of the *quorum*, the proper way to obtain the avoidance of the appointment is by appealing. (*Rex v. Fisher*, and *Rex v. Towill*, *Cald.* 135; 1 *Bott*, 72; *Albrighton v. Skipton*, 1 *Str.* 300.)

If the appointment is void, it may be questioned collaterally in an *appeal against an order of removal*, made to an extra-parochial place having no officers, or to a township or other minor district, when it ought to have been made to the parish at large; or, probably, to a parish at large when it ought to have been to one of the townships in that parish. (*Rex v. Denham*, *Burr. S. C.* 35; *Dolting v. Stokelane*, *Fort.* 219; *Rex v. Tamworth*, *Cald.* 28; 1 *Bott*, 156; *Rex v. Swalcliffe*, *Cald.* 248; 2 *Bott*, 896.) Another mode, the converse of the last, is an appeal against an order of removal made from a wrong district. (*Forest of Dean v. Parish of Linton*, 2 *Salk.* 487.)

The validity of the appointment of overseers for a parish or vill may be tried in a distress for a poor rate made by them, as in *Lane v. Cobham*, (7 *East*, 1.) But by 17 Geo. II. c. 38, s. 8, the distress is not unlawful for any defect of form in the warrant of appointment. The appointment may be removed into *K. B.* by *certiorari*, at any time before the expiration of the year for which it was made; but it seems not afterwards. Upon which the Court will go into the consideration, not only of *prima facie* defects, but of extrinsic objections appearing by affidavit. (*Rex v. Great Marlow*, 2 *East*, 244. See *Rex v. Butler*, 1 *Bla. Rep.* 649.) And this may be done without appealing against it to the sessions; and the Court will go into the question upon affidavit, whether the place for which the appointment is made be a township or vill, and if it appear by the affidavits that it is not, and be not stated to be such, or that it is reputed to be such, the Court will quash the appointment. (See facts of *Rex v. Standard Hill*, *ante*, 14, 4 *M. & S.* 244.) It will also happen in some cases, that a motion for a *mandamus*, to be directed to two justices of the neighbourhood, commanding them to appoint overseers for the proper district, will be the proper method of disputing the propriety of an appointment. But according to Mr. *Nolan*, (1 *Nol. P. L.* 37, note (4),) it is not applicable to improper appointments for extra-parochial places. The custody of the instrument of appointment belongs to the overseers. (*Rex v. Stoke Golding*, 1 *B & Ald.* 173.)

10. THE POWERS, DUTIES, AND LIABILITIES OF OVERSEERS.

10. Powers, Duties, and Liabilities of Overseers.

The nature of the powers and duties of an overseer depends altogether upon the circumstance whether his parish is,

First, Without a select vestry, or guardians; or,

Secondly, Whether it is under a select vestry; or,

Thirdly, Whether it is under guardians; and each of these deserve a *separate* consideration.

First, Where there is *not* any select vestry or *guardians*, the overseers were directed by the 43 Eliz. c. 2, s. 1 & 2, to take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children: and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise, weekly or otherwise, (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal-mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the *lame, impotent, old, blind, and such other among them*,

Who shall be taxed towards the relief of the poor.

A convenient stock shall be provided to set the poor on work.

being poor, and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock, as otherwise concerning the premises as to them shall seem convenient:"

"II. Which said churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices of the peace or more as is aforesaid, shall meet together at the least once every month in the church of the said parish, upon the Sunday, in the afternoon after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premises; upon pain that every one of them absenting themselves without lawful cause as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace, or any two of them before mentioned, to forfeit for every such default of absence or negligence twenty shillings."

The power of the overseers extends over the whole parish, but there may be a subdivison of the parish by the overseers themselves as a matter of arrangement. In such cases, the accounts form only an entire parochial account. (*Malkin v. Vickerstaff*, 3 B. & A. 189; and see 1 Bar. & Adol. 1; 3 Bar & Adol. 941; 3 Maule & Selw. 471; *Eaden v. Tilchmarsh*, 1 Adol. & Ell. 691.) But where there is such a subdivison, the overseers are responsible for the malversation of each other. (*Rex v. Justices of Essex*, 3 B. & Adol. 941.) And, indeed, an overseer, as an inhabitant, may appeal against his co-overseer's accounts. (*Rex v. Justices of Gloucestershire*, 1 B. & Adol. 1.) Under the statute of Eliz. it was the duty of the overseers to obtain and give employment, at reasonable wages, for able-bodied persons who are unable to obtain employment for themselves (*Rex v. Collett*, 2 Bar. & Cres. 324; 3 D. & R. 582, S. C. post); and to give pecuniary relief only to the sick and impotent. The general care and management of the poor was vested in them, subject only to some controul from the justices of the peace.

An overseer is not bound to take precautionary measures against the small pox, by causing the poor to be vaccinated. And even if the overseer has, by the direction of the vestry, agreed that the poor shall be vaccinated at the expense of the parish, and refuses to fulfil that agreement, the Court will not grant a criminal information against him: although in consequence of his conduct the infection of the small-pox has spread, and many of the poor have died. (*Anon.*, 5 Nev. & Man. 12; *Trinity Term*, 1835.)

Where, however, a select vestry has been constituted under 59 Geo. III. c. 12, the overseers were to give no relief, but such as should be ordered by the vestry.

Wherever a parish, or united parishes, adopted the provisions of the 22 Geo. III. c. 83, and appointed guardians, that statute expressly enacts, that "neither the churchwardens or overseers shall interfere or intermeddle in the care and management of the poor, but shall continue to have the same powers of making and collecting rates, as they had at that time." (See ante, Vol. II. title "Guardians," and as to relief in cases of emergency, see title, "Relief," post.)

These words do not, however, transfer the power of binding out apprentices from the overseers to the guardians, for where a parish had adopted the provisions of 22 Geo. III. c. 83, and the overseer had executed the indenture, and not the guardian, C. J. Abbot said, "I am of opinion that this binding was valid. The 7th section of 22 Geo. III. c. 83, is calculated to raise a doubt upon the point, for it excludes the interference of the churchwardens

5. Overseers.
10. Their
Powers,
Duties, and
Liabilities.

43 Eliz. c. 2:
The overseers
shall meet once
every month.

Overseer not
bound to expend
money in vacci-
nating paupers.

Their duty where
a select vestry.

Where guardians
appointed under
Gilbert's Act.

Overseers, not
guardians, to bind
apprentices.

5. Overseers.
10. Their
Powers,
Duties, and
Liabilities.

Where guardians
under new Poor
Law Act.

Make rates. (a)

To pay to guar-
dians.
Rate-book.

Relief in emer-
gency. (See title
"Relief," post.)

No money.

Refusal.

In the event of
sickness, &c. of
relieving officer,
or vacancy of
office.

and overseers in the care and management of the poor, where guardians are appointed. If there was nothing else in the act to guide us, it might be difficult to say that they could interfere in binding parish apprentices. But in subsequent parts of the statute various powers are expressly given to guardians of the poor; and by the 30th section they are authorized to provide for poor children until they arrive at a proper age to be placed out, when they are to be bound out according to the laws then existing; one of these laws was the 43 Eliz. c. 2, directing that parish apprentices should be bound out by the churchwardens and overseers. And it is better that a binding should take place by several churchwardens and overseers than by one guardian." (*R. v. Lutterworth*, 3 B. & C. 487; 5 D. & R. 343.)

And now, where guardians are appointed under 4 & 5 Will. IV. c. 76, we have seen that the statute has transferred to them the general care of the poor. Still the overseers in every union shall make, assess, and collect all rates for the necessary relief of the poor, and for defraying all other charges and expences chargeable on the same; and they are to pay to the common fund such sums as the guardians shall direct. They are to provide a rate-book in the form prescribed by the rules.

By the 54th section they are empowered, in cases of sudden and urgent necessity, to give temporary relief in articles of necessity, but not in money; and the rules require that they should endeavour to procure the relieving officer to give it; and in all cases the same must be reported to the relieving officer. Should the overseer refuse relief in cases of necessity, a justice of the peace may order it; and the overseer is liable to a penalty.

In the event of a vacancy in the office of relieving officer, or delay in the appointment of a substitute during sickness, and until the first relieving officer is appointed, all the duties belonging to the office are to be performed by the overseer of the parish. R. 16.

6. Of Officers
with Salaries.

Appointment of
assistant over-
seers. (b)

* *Sic.*

6. Appointment of Officers with Salaries.

The overseers and guardians having a duty imposed on them by law, are not entitled to any remuneration for their services, but it has been found expedient to provide for the payment of a salary to *assistant overseers*. And by the 59 Geo. III. c. 12, s. 7, it is enacted, "That it shall be lawful for the inhabitants of any parish in vestry assembled, to nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, and to determine and specify the duties to be by* or them executed and performed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit; and it shall be lawful for any two of his Majesty's justices of the peace, and they are hereby empowered, by warrant under their hands and seals, to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary, as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry and the respective persons so to be appointed; and every person to be so appointed assistant overseer shall be and he is hereby authorised and empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed in like manner and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor; and every person or persons so appointed shall

(a) See Rules in Appendix.

(b) As to the duties and liabilities of an assistant overseer, see *Bennet v. Edwards*, 7 B. & C. 586; 1 Man. & R. 482, S. C.; 6 Bing. 230; 3 Younge & J. 464. An assistant overseer is liable to a pe-

nalty for selling goods for use of poor, for his profit, same as an overseer, *id.* But he is not liable for neglect of any supposed duty not prescribed in his appointment. *Id. ibid.* See cases, *post.*

continue to be an assistant overseer of the poor until he or they shall resign such office, or until his or their appointment shall be revoked by the inhabitants of the parish in vestry assembled, and no longer; and it shall be lawful for the inhabitants of any parish, upon the nomination and election by them of an assistant overseer or overseers, to require and take security for the faithful execution of his or their office, by bond, with or without a surety or sureties, and in such penalty as they shall think fit; and every such bond shall be made to the churchwardens and overseers of the poor, and may, on any breach of the condition thereof, be put in suit by and in the names of the churchwardens and overseers of the poor for the time being, by the direction of the vestry or select vestry, for the benefit of the parish, in the manner hereinafter provided."

Sect. 35. The same provision as to the election of an assistant overseer is extended to all townships, vills, and places having separate overseers, and maintaining their poor separately.

By the Stamp Act (55 Geo. III. c. 184, tit. "*Grant*,") any appointment in writing to an office or employment, where the yearly salary does not amount to 50*l.* a-year, must be stamped; an appointment to the office of assistant overseer, at a salary of 10*l.*, is therefore within the very words of the act, and requires a 2*l.* stamp. (*R. v. Inhabitants of Lew*, 3 M. & R. 369; 8 B. & C. 655, S. C.)

6. *Officers with Salaries.*

Security may be taken.

Appointment must be stamped.

PAID OFFICERS, UNDER 4 & 5 WILL. IV. c. 76, s. 46.

The appointment of paid officers will for the future be almost, if not altogether, regulated by the 46th section of 4 & 5 Will. IV. c. 76, which enacts, that the commissioners may direct the overseers or guardians to appoint paid officers with such qualifications as the commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for auditing the accounts, and otherwise carrying the act into execution; and the commissioners are empowered to define the duties of such officers, their continuance in office, and the security to be given, and to regulate the salaries of such officers, and such salaries shall be payable out of the poor rates.

Commissioners may direct overseers and guardians to appoint paid officers for parishes or unions; and fix their duties, and the mode of appointment and dismissal, and the security; and regulate their salaries.

In pursuance of the authority here given to the commissioners, they have directed that in each union, at the first meeting of the guardians, or within one month after the same, the guardians shall appoint a fit and proper person to be *clerk to the board of guardians*, and a fit and proper person to be *treasurer* to the said union, and shall take such security for the proper discharge of the said office of treasurer as shall seem to them necessary and fitting; and shall also appoint such and so many competent person or persons as the said board of guardians shall think fit, to be *relieving officer or relieving officers* of the said union, and shall likewise determine the parishes or places for which each such relieving officer shall act; and in case and so often as any person so appointed shall die, or resign, or be removed, the said board of guardians shall, as soon as conveniently may be after such death, resignation, or removal, proceed in like manner to a new appointment; and the salaries of such clerk, treasurer, or relieving officers, shall be such as the said poor law commissioners shall from time to time direct.—R. 14.

Appointment of clerk, treasurer, relieving officer.

Salary.

The 15th and 16th sections provide for the discharge of the duties of clerk and relieving officer, in cases of vacancy or sickness; and by R. 17, no person shall be chosen as such relieving officer unless he will undertake to reside in one of the parishes for which he may be appointed to act, and to devote his whole time to the employment, not following any other trade or profession whatsoever, nor unless he can read and write and keep accounts.

Relieving officer to reside in one of the parishes for which he acts.

The duties of the clerk are prescribed by the 18th R. (See *Appendix*.)

Clerk.

The guardians are required by the 28th R. to appoint an auditor, and his duties and salary are there specified. (See *post*, tit. "*Accounts*.")

Auditor.

6. Officers with Salaries.

DUTIES OF THE RELIEVING OFFICERS.

To attend meetings.

To attend all weekly meetings of the guardians, and all other meetings when summoned for that purpose.

To receive applications for relief, &c.

To receive all applications for relief, and to examine into the merits and circumstances of each case, and report the same to the board at their next weekly meeting.

To give temporary relief.

In cases of *sudden and urgent necessity*, to give such temporary relief as each case shall require, either by placing the pauper in the workhouse, or affording relief out of the house, in articles of absolute necessity, but not in money; whether the applicant for relief be settled in any parish or place comprised in the union or not.

To notify sickness of paupers.

To give notice of the sickness of, or of any injury received by any pauper to the medical officer, and in the meantime furnish such relief as the emergency of the case may call for; and shall also furnish such further relief in or out of the workhouse as the case, upon the certificate of the medical officer, may appear to require.

To keep account of monies disbursed by him for poor.

To keep a separate account of monies received and disbursed by him on account of the relief of the poor, and also of all articles received and given out by him for the relief of the out-door poor, and to balance such account weekly, and present the same for inspection and approval at the meeting of the guardians.

To report cases of relief given by churchwardens.

To report to the board, at their weekly meeting, all cases in which relief shall have been given by the churchwardens or overseers of the poor of any parish.

To enter names of paupers, &c. in a book.

To keep a book in which he shall enter the name of and particulars relating to the paupers relieved out of the workhouse, and the amount of relief afforded to them respectively; and to produce such book for the inspection of the guardians at every weekly meeting of the board.

To make out quarterly list.

Once in every quarter of a year, as soon as conveniently may be after Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, he shall make out a list, according to form E., for each of the parishes for which he may be appointed to act, of the paupers who have received relief during the previous quarter, and of the relief afforded them in or out of the workhouse, and shall affix copies of such lists respectively upon the principal doors of the parish churches of the parishes or places for which such lists are made; which copies shall remain so affixed for three successive Sundays.

To observe orders, &c.

Generally to observe orders of the board of guardians, and the rules of the commissioners.

7. Of Select Vestries under authority of 59 Geo. III. c. 12.

Parishes enabled to establish select vestries for concerns of the poor.

The care and management of the poor may be placed under the direction of a SPECIAL VESTRY, for the 59 Geo. III. c. 12, s. 1, enacts, "that it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to establish a *select vestry* for the concerns of the poor of such parish; and to that end to nominate and elect, in the same or any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof, (such curate being resident in and charged to the poor's rates of such parish,) and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid, (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is hereby authorized and required to make,) shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be

Constitution of select vestries.

Members elected to be appointed by a justice.

a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment, in manner aforesaid, of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner hereinbefore directed; and every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside therein; and in all cases of equality of votes upon any question there arising, the chairman shall have the casting-vote; and every such select vestry is hereby empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices, in the cases hereinafter provided for,) give any further or other relief or allowance to the poor, than such as shall be ordered by the select vestry."

Rex v. Woodman, 4 B. & A. 507. The parish of *Morpeth*, beyond the period of living memory, has been managed by a select vestry, consisting of twenty-four persons. The inhabitants constituting the select vestry have generally continued in office for life, unless they happened to leave the parish or declined to serve. None of the inhabitants, besides the twenty-four, and the rector or curate, ever attended these vestry meetings. A notice was duly given that a meeting of the twenty-four gentlemen would be held for the establishing of a select vestry, and a meeting was accordingly held; at which meeting the defendant and nineteen other substantial householders or occupiers within the township were nominated and elected to be members of such select vestry, and an order of a magistrate was subsequently made, by which such twenty persons were appointed to act as a select vestry for the care and management of the poor. *Abbott, C. J.* "I am clearly of opinion, that the

7. Of Select Vestries, &c.

Vacancies to be supplied.

Continuance of select vestries.

Power of renewal.

Meetings and duties of select vestries. (a)

Overseers (except in cases of emergency) to give no other relief than such as shall be ordered by the select vestry.

A select vestry for the management of the parish affairs existing by ancient custom, cannot elect another select vestry for the management of the poor within the 59 G. 3, c. 12.

(a) There must, it seems, be a majority of select vestrymen present to constitute a valid meeting, as it is a general rule, that where a public trust is to be executed by a definite number of persons, it must be executed at a meeting where a majority of that number is present, unless there be a usage or custom to the contrary; and where by certain statutes the commissioners for enlarging churches appointed twenty-six persons to be a select vestry, for the care and management of the church, it was held, that to consti-

tute a good assembly of such vestry, a majority (viz. fourteen) must be present. *Blacket v. Blizzard*, 9 B. & C. 851. The words of these statutes resemble those of the above statute. A Common-law vestry consists of an indefinite number; and therefore this rule does not apply to them.

By the 38th sect. of 4 & 5 Will. IV. c. 76, it is provided, that "no act of any such meeting (i. e. of the guardians of the union) shall be valid, unless three members shall be present and concur therein."

7. *Of Select Vestries, &c.*

Appointment of a select vestry supersedes power of a common vestry.

59 G. 3, c. 12. Justices empowered to order relief in certain cases for a limited time.

One justice may order temporary relief, in cases of urgent necessity.

Minutes to be kept of the proceedings of select vestries.

Minutes of select vestries, and reports of their proceedings, to be laid before the inhabitants in general vestry.

sixteen persons who constituted the ancient select vestry for the township of *Morpeth*, cannot be considered the inhabitants of the parish in vestry assembled, within the meaning of the 59 Geo. III. c. 12. The power to appoint a select vestry is expressly given to the inhabitants in vestry assembled; and here it was exercised, not by the inhabitants in vestry assembled, but by certain persons possessing some of the powers of the inhabitants in vestry assembled. It is not necessary in this case to decide what the inhabitants may do, but I have no difficulty in saying that in my opinion the inhabitants at large may assemble and appoint a select vestry for the care and management of the poor, not interfering with any of the rights of the ancient select vestry. The rule for quashing the order must therefore be made absolute."

Clarke v. King, 2 *Younge & J.* 525. Wherever a select vestry is appointed, the right of the common-law vestry has always, in practice, been considered as *de facto* superseded; and the language of this act of parliament appears to confer upon that body the authority relative to the care and management of the poor, which the parishioners at large were before in the habit of exercising. It is optional with the parishioners, whether they will or will not proceed upon the old law, or upon the provisions of the statute, by the appointment of a select vestry; but if they pursue the latter course, they delegate their authority to that body. It follows that the consent of a select vestry, constituted under this act, is sufficient to render valid a contract under 9 Geo. I. c. 7, s. 4, for the lodging, keeping, and maintaining the poor of a parish.

Sect. 2. "That when any complaint shall be made to any justice of the peace, of the want of adequate relief, by or on the behalf of any poor inhabitant of any parish for which a select vestry shall be established by virtue of this act, or in which the relief of the poor is or shall be under the management of guardians, governors, or directors, appointed by virtue of special or local acts, such justice shall not proceed therein, or take cognizance thereof, unless it shall be proved on oath before him that application for such relief hath been first made to, and refused by, the select vestry, or by such guardians, governors, or directors; and in such case, the justice, to whom the complaint shall be made, may summon the overseers of the poor, or any of them, to appear before any two of his Majesty's justices of the peace, to answer the complaint; and if, upon the hearing thereof, it shall be proved on oath, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief hath been refused by the select vestry, or by such guardians, governors, or directors, or that such select vestry shall not have assembled as by this act directed, it shall be lawful for such justices to make an order, under their hands and seals, for such relief as they, in their just and proper discretion, shall think necessary, (reference being also had by such justices to the character and conduct of the applicant); provided, that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given for, or extend to, any longer time than one month from the date thereof: provided that it shall be lawful for any justice to make an order for relief in any case of urgent necessity, to be specified in such order, so as such order shall remain in force only until the assembling of the select vestry of the parish, or of such guardians, governors, or directors as aforesaid, to which such case shall relate."

Sect. 3. "Every select vestry, to be established by the authority of this act, shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction, and such minutes shall from time to time be signed by the chairman; and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled, twice in every year, that is to say, in the month of *March* and the month of *October*, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry

shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof."

Sect. 4 provides, "that the churchwardens and overseers of the poor shall cause ten days' notice, at the least, to be publicly given in the usual manner, of every vestry to be holden for the purpose of establishing any select vestry, or of nominating and electing the members, or any member thereof, and of every vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall state the special purpose thereof."

Sect. 35. "All powers and authorities by this act given to and vested in justices of the peace shall be exercised and executed by such justices within the limits of their respective commissions and jurisdictions, and not elsewhere; and that all provisions, clauses, authorities, and directions in this act contained in relation to parishes, shall extend and be construed to extend to all townships, vills, and places, having separate overseers of the poor, and maintaining their poor separately; and that all acts and duties required and authorized by this act to be done and executed by churchwardens and overseers of the poor, may in every parish be performed, exercised, and executed by the major part of the churchwardens and overseers of the poor thereof; and that in townships, vills and places which have no churchwarden, the same may be performed, exercised and executed by the overseers of the poor thereof, or the major part of them; and that all the powers, provisions, and clauses in this act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place, having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally and respectively named and repeated."

Sect. 36 provides, "that nothing in this act contained shall extend or be construed to extend to take away, abridge, alter, prejudice, or affect, further than is hereby expressly enacted, any of the powers, directions, provisions, or regulations contained in the said act passed in the twenty-second year of his present Majesty's reign, for the better relief and employment of the poor, in or with respect to such parishes, townships and places as have adopted, or as shall adopt and become subject to the provisions of that act; nor to take away, abridge, alter, prejudice or affect any of the powers or provisions of any special or local act or or acts, for the maintenance, relief, or regulation of the poor in any city, town, hundred, district, parish or place, so nevertheless, that in every city, town, hundred, district, parish or place, such of the clauses, directions and powers in this act contained, as are not repugnant to, nor incompatible with, the provisions of the said act of the twenty-second year of his Majesty's reign, or of such respective special or local acts, shall have the like force and effect, and may be adopted and applied in like manner, as in other parishes and places: provided also, that nothing in this act contained shall extend or be construed to extend to alter, affect or disturb any select vestry which in any parish has been established and acted upon by virtue of any ancient usage or custom."

Sect. 37. "That this act shall extend only to that part of the United Kingdom called England."

Rex v. The Churchwardens and Overseers of St. Martin in the Fields, 3 Bar. & Adol. 907. Where an ancient select vestry existed in a parish having and exercising certain powers in the management and care of the poor, but not all the powers required by the statute 59 Geo. III. c. 12, to be exercised by select vestries, the Court granted a mandamus calling on the parish officers to convene a meeting, pursuant to the act, for the purpose of establishing a new select vestry to perform those functions under the act which the former vestry could not discharge, but not otherwise to interfere with it.

Rex v. St. Bartholomew the Great, 2 Bar. & Adol. 506. To a mandamus calling on churchwardens and overseers to summon a meeting for the purpose of establishing a select vestry for the concerns of the poor, pursuant to

7. Of Select Vestries, &c.

Notice to be given of vestries for the establishment and election of members, and for receiving reports of select vestries.

Justices to act within their respective jurisdictions.

Provisions relating to parishes applied to townships, &c.

Majority to act.

Powers given to vestries applied to meetings of townships, &c.

Saving powers of 22 G. III. c. 83, where the provisions are adopted.

Saving powers given by special acts.

Select vestries.

Act extends to England only.

There may be two select vestries in a parish, the one elected under 59 G. III. having all the powers not belonging to an ancient one.

But such ancient vestry cannot claim an immemorial right to

7. Of Select Vestries, &c.

exercise the power first given by the statute of Eliz.

The exception as to local acts does not apply where the vestry is not specially constituted.

Notice of unusual meeting must be served on all the select vestry.

The appointment by the justice is a ministerial act.

59 Geo. III. c. 12, a return was made stating that there was by custom an ancient vestry in the parish which had from time immemorial consulted and deliberated on parochial matters, and acted as a select vestry for the concerns of the poor, and that they had immemorially been accustomed to perform the duties imposed on select vestries by the statute: held, that the return was bad, since the statute imposes some duties, as the management of money raised by poor rates, and making orders for the government of overseers, which could not have existed before the statute 43 Eliz. c. 2. *Parke, J.*, observed, "The ancient vestry may have had from time immemorial the power of managing and applying the funds raised for the relief of the poor, otherwise than by compulsory rates. There is no reason they should not continue to enjoy that authority, if existing. But it is also clear that the inhabitants are not precluded from exercising the power of appointing a select vestry to discharge those functions, and very important ones they are, which arise out of the poor law first established by the statute of Elizabeth." And this decision will agree with the opinion expressed by Lord *Tenterden* in *Rex v. Woodman*, ante, 35.

Rex v. Churchwardens of St. James's, Clerkenwell, 1 Adol. & Ell. 317; 3 Nev. & Man. 411, S. C. A local act passed before the stat. 58 Geo. III. c. 69, for the regulation of parish vestries created the office of guardians of the poor for a particular parish, and enacted that vacancies should be annually filled up by the rated inhabitants assembled in the vestry room, who should elect persons in the room of those going out: held, that after the passing of stat. 58 Geo. III. c. 69, the inhabitants must be allowed in such election the number of votes in proportion to their respective assessments defined in the latter act, for that the local act did not give this vestry such a peculiar constitution as to bring it within sect. 8 of 58 Geo. III. c. 69, which preserves to vestries, holden under any special act, the powers and rights of voting which they previously enjoyed. The intention of the act was to change the method of determining the majority in all cases where no special constitution existed before.

Where a select vestry has been established, notice of an unusual meeting must be served on every select vestryman, otherwise the meeting is not duly convened, and cannot justify the expulsion of a person who was not one of the select vestry. (*Dobson v. Fussy*, 7 Bing. 305.)

Rex v. Adams, 2 Adol. & Ell. 409; 4 Nev. & M. 299. In the parish of *Tenterden*, the inhabitants elected twenty select vestrymen, and the justice omitted two in his appointment, because they were ex officio members, one as a justice and the other as an overseer. The Court granted a mandamus to compel him to insert the names, although it was sworn that injury had resulted from the union of the offices of select vestryman and justice. Lord *Denman*, "The magistrates have nothing to do, except to appoint the persons already chosen by the inhabitants. The word 'elect' is a very strong one. The word 'appoint' is certainly an unlucky expression, if the meaning of the legislature be that they are only to register the acts of others: but it is clear to me that this was the only meaning. That being so, whatever consequences may follow, we have merely to give effect to the act." The rest of the Court concurred.

8. Incorporation of Parishes.

Under the previous title of "Guardians prior to the 4 & 5 W. IV. c. 76," will be found the several enactments for the incorporation of parishes under *Gilbert's* act. The principal object of such incorporation, as well as of the modern unions, is, to provide a common workhouse for the whole district, and we propose therefore to defer the other legislative provisions relating to the old incorporation until we treat of workhouses.

9. Unions.

The incorporation of parishes mentioned in the last chapter, for the care and management of the poor, was voluntary; but now, by the 4 & 5 W. IV.

Parishes may be united by the commissioners.

c. 76, s. 26, (a) the commissioners "may declare any parishes, which they think fit, to be united for the administration of the laws for the relief of the poor, and such parish shall thereupon be deemed a union." And the workhouses of such parish shall be for the common use, and the poor of each parish shall be maintained and employed therein; but each parish shall be separately chargeable with the expense of its own poor, whether relieved in or out of the workhouse.

In estimating the proportion which each parish is to contribute to the common fund, both for providing a workhouse and employing the poor, the commissioners are required to ascertain the expense incurred for the relief of the poor in each parish for the three years preceding the inquiry; and upon the application of the guardians, or overseers of any parish, the inquiry may be from time to time repeated, and a new proportion determined, s. 28. The returns made to parliament of the sums expended for the relief of the poor, shall be taken as the ground on which the averages shall be calculated, s. 30. No union can now take place without the consent of the commissioners, s. 37. The commissioners may dissolve any union (except unions for the purpose of settlement or rating) or separate any parish, or add any to it, provided two thirds of the guardians of such union concur therein. In such cases rules are to be adapted to its altered state, and the proportionate value to every parish of the common property, and the liabilities of each parish, are to be ascertained and the sums due to be secured, s. 32.

If all the guardians agree and the commissioners approve, all the parishes of a union may become one parish for the purpose of *settlement*. The agreement must be signed by *all* the guardians, and deposited with the clerk of the peace; from which time a settlement of any person in any one parish of the union, shall be considered a settlement in the union; and the expense of his maintenance, as well as that of ascertaining and litigating his settlement, shall be paid out of the common fund, s. 33.

The guardians may in the same way agree that, for the purpose of *rating*, the parishes of any such union shall be considered *one* parish; but in such cases all the parishes of the union must be situate within the same county, and under the jurisdiction of the same justices of the peace; and this agreement, when deposited with the clerk of the peace, cannot be revoked or annulled, s. 34. In such cases the guardians shall assess the value of the property in each parish; and all rates grounded on such assessment may be recovered, allowed, and appealed against, in the same manner as ordinary rates, s. 35. After the making of the common rate, the proportions fixed by sect. 32, shall cease, and there shall be a common expenditure; if any parish at the time of such assessment is not represented by a guardian, it will not bind such parish unless a majority of the owners of property and rate payers assent in a prescribed form, s. 36.

One of the principal objects in the formation of unions is to provide "a well managed *workhouse*, which should be the common workhouse of the incorporated district, to assign to those workhouses separate classes of poor, though composed of the poor of distinct parishes, each distinct parish paying to the support of the payments of the permanent workhouse establishment." (b) By the 23d sect. of 4 & 5 W. IV. c. 76, the commissioners are empowered, with the consent of a majority of the guardians of any union, or the majority of rate-payers and owners of property in any parish, to order the overseers or guardians of any parish or union not having a workhouse to build a workhouse, and to purchase or hire land or any building for that purpose; and, with the like consent, to order the overseers or guardians of any parish or union having a workhouse, or any buildings capable of being converted into a workhouse, to enlarge or alter the same, or to provide an additional workhouse of such size, description and plan as the commissioners shall deem proper; and the overseers and guardians are authorized to raise such sums of money as may be necessary for the purpose, by such means as

9. Of Unions.

Workhouse in common.

Each parish chargeable for its own poor.

Estimate of proportion to be paid by each parish.

Interest in common fund and liability to be ascertained.

United parishes may be one for the purpose of settlement;

and for the purpose of rating.

Assessment.

Common rate.

Common expenditure.

Parish without guardians.

Workhouse.

Commissioners empowered to order workhouses to be built, hired, altered, or enlarged, with consent, &c.

(a) See the sections at full length in the Appendix. (b) See "Report" 314.

10. *Of Workhouses.*

Sums to be raised for the purposes of building workhouses to be charged on poor rates; not to exceed one year's amount of poor rates.

Power to order workhouses to be altered or enlarged, without consent, &c.

Sums to be raised for such purposes not to exceed one tenth of one year's rates, or 50*l*.

are now by law given to overseers or guardians for purchasing or hiring land, or for building, hiring, and maintaining workhouses, (a) or to borrow money for such purposes under this or any other act.

And by sect. 24, it is enacted, that the sum to be raised for such purposes shall not exceed the average annual amount of the poor rates; and any loan shall be repaid by annual instalments of not less than one tenth, with interest: the money is to be charged on the poor rates.

By sect. 25, it is enacted, that the commissioners may, without requiring any consent, order the overseers or guardians of any parish or union having a workhouse, or any building capable of being converted into a workhouse, to enlarge or alter the same: provided, that the sums to be raised for such purposes, and charged upon any parish, shall not exceed fifty pounds, nor one tenth of the average annual amount of the poor rates.

10. *Of Workhouses.*

WORKHOUSES BEFORE 4 & 5 WILL. IV. c. 76.

9 G. I. c. 7, s. 4, where two or more places may join, when one too small.

In the preceding chapter we have seen that the guardians and overseers are authorized to provide a workhouse, to exercise all the powers which by law had then been given for similar purposes. By 9 Geo. I. c. 7, s. 4, a parish was enabled to purchase or hire a house for the maintenance and employment of the poor therein; and it also enacted, that "where any parish, town, or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, &c. with the consent of the major part of the inhabitants in vestry assembled, and with the approbation of a justice of peace, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed."

Houses to be provided.

By 22 Geo. III. c. 83, s. 17, "the guardians of the poor of the several parishes, townships, and places, which shall adopt the provisions of this act, shall provide a suitable and convenient house or houses, with proper buildings and accommodations thereto, when wanted, either by erecting new ones on land to be purchased or rented by them for that purpose, altering old ones, or hiring buildings for the purpose; and shall fit up and dispose the same, with the advice and approbation of the visitor, if any, in such manner as shall be most conducive to the general purposes of this act, at the expense of such parish or township, or parishes, townships, and places, respectively, in the proportions herein-after mentioned; and shall provide such utensils and materials as they shall think necessary for their employment, according to the true intent and meaning of this act."

Houses where to be situated.

Sect. 18. "That the several poor houses or workhouses to be built or provided under the authority of the act, shall be situate within the parish or township for which they shall be used, if single parishes or townships, and if several parishes or townships shall be united for the purposes of this act, they shall be built or provided within one of the parishes or townships so to be united, and not in any other parish, township, or place, without the consent of three-fourth parts, in number and value as aforesaid, of such owners or occupiers of lands, tenements, or hereditaments, within the same, first had and obtained, qualified as herein-before mentioned, who shall be assembled at a public meeting to be holden in the manner and upon the like notice herein-before directed for public meetings."

On what condition to be rented, and how taxed and rated.

Sect. 19. "That all the houses, buildings, and lands, to be hired or rented under the authority of this act, shall be hired or rented in such manner, for such term or terms, and on such conditions, as are specified in the form of

(a) As to these means, see "*Workhouses*" and "*Poor Rates*," and the sections of this statute in the Appendix.

agreement contained in the said schedule, No. IV.; and all such houses, buildings, and lands, shall be free from all parochial and parliamentary taxes, except such taxes, and to such amount, as they were assessed at the time they were first taken and applied for the purposes of this act."

Sect. 27. "That in order to encourage the salutary and benevolent purposes of this act, and to afford better accommodations for the poor at such poorhouses, it shall and may be lawful for the guardians of the poor, where any such poorhouse shall be provided, purchased, or agreed to be erected, to inclose from any waste or common land or ground lying near or adjoining thereto, with the consent and approbation of the Lord of the Manor, and the major part in value of the freeholders or persons having right of common thereupon, signified under their hands and seals, any part or portion of such waste or common land, not exceeding ten acres, for the purpose of building upon, or occupying, cultivating, and improving the same, for the use and benefit of such poorhouse, and the poor persons within the parish, township, or place, where the same shall be, or within the parishes, townships, or places, which shall be united therewith for the purposes of this act."

59 Geo. III. c. 12, s. 8, enacts, "that in any parish not having a workhouse for the poor thereof, or where the workhouse shall be found insufficient or inconvenient, it shall be lawful for the churchwardens and overseers of the poor, by the direction of the inhabitants in vestry assembled, to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose; or such churchwardens and overseers may and they are hereby authorized to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct."

Sect. 10. "And whereas there may be parishes in which no sufficient poorhouse or workhouse can be procured for the accommodation of the poor thereof; be it further enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of every such parish, by the direction of the inhabitants thereof in vestry assembled, to purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house or houses, building or buildings; provided always that no such house or building shall be situate more than three miles from the parish for which the same shall be purchased or hired."

Rex v. St. Peter and St. Paul, in Bath, Cald. 213; 1 Bott. 483. W. Hill was removed from Lyncombe and Widcombe to St. Peter and St. Paul. Order confirmed. Case:—The parishioners of St. Peter and St. Paul, with the parishioners of St. James, in Bath, purchased a piece of ground in the parish of Lyncombe and Widcombe, and built thereon a house for the reception of their poor. W. Hill, with the paupers belonging to St. Peter and St. Paul, removed to this house, where they have been maintained, without any charge to the parish of Lyncombe and Widcombe. Hill and all the other paupers carried with them regular certificates, which were delivered to one of the officers of Lyncombe and Widcombe. Notwithstanding his certificate the pauper was removed from Lyncombe and Widcombe, though he had not been chargeable to that parish. The sessions were of opinion that the pauper was not an object of the certificate act, and consequently not protected by it. Lord Mansfield, C. J. "To be sure it was a radical defect in the system of the poor laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of industry, vigour, and skill, a man, who could not find work at home, was prohibited from seeking it abroad. The legislature endeavoured to cure this evil by introducing certificates, under which the pauper is at liberty to go

10. *Of Workhouses.*

Enclosing commons for use of workhouses, &c.
(a)

Power to build or enlarge workhouses.(a)

Where no poorhouse, &c. can be procured in the parish, adjoining parish may be resorted to.

A workhouse in a third parish is to be considered as part of that parish whose poor reside therein.

(a) These powers are under the control of the commissioners. See Appendix, 5 & 6 Will. IV. c. 69, s. 4.

10. *Of Workhouses.*

The advantages
of workhouses
explained.

and reside wherever he pleases. And the true principle is to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was, however, soon felt as an inconvenience; they were, not long after, introduced by the legislature; and, if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the *Midland* circuit, they have reduced the annual amount of the poor rates one-half. But this benefit could not within itself be received by every separate district: for where parishes were small, the expense of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings within their own limits, yet where two unite, no restrictions were imposed, the power is general. It is obvious that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act, therefore, authorizes the purchase anywhere: and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expense, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorizes the whole body of the poor, of whatever denomination and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the Court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district, within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitancy, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish, within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*.—*Buller, J.* “As to the last difficulty raised, I doubt whether the poorhouse so occupied, and become in this manner the perpetual property of the united parishes, is not, to this purpose, rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle, as that of many resolutions in the case of such children born in gaols.”—*Willes and Ashurst. Js.* concurring, both orders were quashed. Premises taken for the purposes of 4 & 5 Will. IV. c. 76, are to be deemed within the local jurisdiction, though situate in a part of the parish out of the liberties.—S. 44.

Borrowing money
upon the poor
rates, &c. (a)

By 22 Geo. III. c. 83, s. 20, “when any such buildings shall be agreed to be erected, repaired, or fitted up, at the expense of the parish, township, or place, or parishes, townships, or places, which shall adopt the provisions of this act as aforesaid, the expenses thereof, and of the purchase of the land necessary to be used for that purpose, shall be paid by the guardians of the poor of such parish, township, or place, or of the parishes, townships, and places, where

(a) Bonds and securities given, exempt from stamp duties. See Appendix, 4 & 5 Will. IV. c. 76, s. 87.

they shall unite for those purposes, in the proportions to be settled and adjusted by the persons, and in the manner, directed by the agreement to be made as aforesaid; and that it shall and may be lawful for the visitor and guardian of the poor of any such parish, township, or place, when such expenses, or their proportion thereof, shall amount to one hundred pounds or upwards, to borrow the same at interest, and secure such money by a charge upon the poor's rates of such parish, township, or place, in sums not exceeding fifty pounds each, for the greater ease in discharging the same, in the form contained in the said schedule, No. XI., or to that or the like effect; which charge shall continue upon the said rates until the money so borrowed, and all interest for the same, shall be fully paid and satisfied: and the said guardians and their successors shall, and they are hereby required duly to pay and keep down the interest of such money so to be borrowed for the use of their respective parishes or townships, as the same shall become due; and that when the principal shall be called for, they may borrow it from some other person or persons; and the same shall be secured to the person advancing the same, by an assignment of such security indorsed on the back thereof, in the form contained in the said schedule, No. XIV., or to that or the like effect: and that the said visitor and guardian, in order to expedite such payments, shall, as soon as the savings in the poor's accounts shall amount to a sum sufficient to pay off and discharge one of the sums which shall have been borrowed, pay off and discharge such sum, and in like manner as to all succeeding savings, until the whole debt so contracted and secured shall be discharged."

By a clause in this section the assessments were to continue at the same rate as they were when the poor house was established; but this was repealed by the 43 Geo. III. c. 110, which after reciting that doubts had been entertained as to the efficiency of the 42 Geo. III. c. 74, which had enabled the overseer to pay off one twentieth every year, it is enacted by sect. 2. "that such assessments shall and may from time to time be diminished to such amount as shall be deemed proper and necessary: provided always, that the guardians of the poor, from the time being, of every such parish, shall yearly and every year, pay off or provide for a twentieth part at least of any monies which shall have been borrowed for the purpose aforesaid, under the powers of the said act of the twenty-second year of his present Majesty's reign, and also shall duly keep down the interest of all monies which shall be so borrowed; any thing in the said recited acts of the twenty-second and forty-second years of his present Majesty's reign, or either of them, contained to the contrary notwithstanding."

One twentieth to be paid off every year. (a)

59 Geo. III. c. 12, s. 14, provides, "that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor, shall be raised, expended, or applied, in any one year, in purchasing, building, and repairing any buildings, or land, by this act authorized to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book."

Limiting the amount to be raised for buildings, and the purchase of lands, &c.

Sect. 15 enacts, "that in every case where the inhabitants of any parish shall in manner aforesaid consent that the greater sum than the amount of a rate or assessment of one shilling in the pound will raise, shall be expended in one year for all or any of such purposes and objects, it shall be lawful for

Power to raise further sums by loans, or by the sale of annuities.

(a) The 36 Geo. III. c. 10, s. 1, after reciting that certain local acts had limited the annual sum to be raised for the poor rates, and that the high price of wheat rendered such sum insufficient, enabled

overseers to raise more according to the price of wheat, so that the rate did not exceed double the amount of the then rate. This latter clause was however repealed by the 52 Geo. III. c. 73.

10. *Of Work-houses.*

Future rates charged with loans and annuities.

No greater rate than 1s. in the pound shall be charged on future rates, unless with consent of two thirds in value of the proprietors of premises.

Incorporation of guardians.

Churchwardens and overseers may take and sue as bodies corporate.

the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner herein-before directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums, by loan, or by sale of an annuity or of annuities on any life or lives, not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan, and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates (every proposal for any such annuity being first stated to and approved by the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorized, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted; and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times, and in such manner and proportions, as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan, and the interest thereof, and of every such annuity accordingly."

Sect. 16 provides, "that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound shall in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, land, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives,) shall have consented to raise the money for which the charge or security shall purport to be made; such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of *femes covert*, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attornies or agents, who are respectively authorized to give such consents, and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates."(a)

4 & 5 Will. IV. c. 76, s. 63. The money requisite for providing a work-house or promoting emigration may be borrowed from the commissioners of exchequer bills.

By 22 Geo. III. c. 83, s. 21, for the purpose of taking lands, &c. the guardians were incorporated; but a more comprehensive statute on this subject has been recently passed, and which will be found in the Appendix, 5 & 6 Will. IV. c. 69.

59 Geo. III. c. 12, s. 17, enacts, "that all buildings, lands, and hereditaments, which shall be purchased, hired, or taken on lease, by the churchwardens and overseers of the poor of any parish, by the authority and for any of the purposes of this act, shall be conveyed, demised, and assured to the churchwardens and overseers of the poor of every such parish respectively, and their successors, in trust for the parish; and such churchwardens and overseers of the poor, and their successors, shall and may, and they are hereby empowered, to accept, take, and hold, in the nature of a body corporate, for

(a) By the 22 Geo. III. c. 83, s. 22, 23, and by the 59 Geo. III. c. 12, s. 18, a power of sale was given to corporate bodies and persons labouring under disabilities; but a more comprehensive provision on this subject has been made by 5 & 6 Will. IV. c. 69, s. 1 and 2. See Appendix.

and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, lands, and hereditaments belonging to such parish; and in all actions, suits, indictments, and other proceedings, for or in relation to any such buildings, lands, or hereditaments, or the rent thereof, or for or in relation to any other buildings, lands, or hereditaments belonging to such parish, or the rent thereof; and in all actions and proceedings upon, or in relation to, any bond to be given for the faithful execution of the office of an assistant overseer, it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and no action or suit, indictment or other proceeding, shall cease, abate, or be discontinued, quashed, defeated, or impeded, by the death of the churchwardens and overseers named in such proceeding, or the deaths or death of any of them, or by their removal or the removal of any of them from, or the expiration of, their respective offices."

Woodcock v. Gibson, 4 B. & C. 462; 6 D. & R. 524; 3 D. & R. M. Ca. 277. In order to constitute the body corporate intended by this act, there must be two overseers and a churchwarden or churchwardens; and that where there were two overseers appointed, one of whom was afterwards appointed (by custom) sole churchwarden, the act did not vest parish property in them, so as to support a plea stating that the freehold was in them.

Phillips v. Pearce, 5 B. & C. 433; 8 D. & R. 43, S. C. Land belonging to a parish was occupied by A., and he paid rent to the churchwardens. They executed a lease of the same land for a term of years to B., and gave A. notice of the lease. In an action for use and occupation by B. against A. : held, that A. was not estopped by having paid rent to the churchwardens, from disputing B.'s title, and that the latter could not derive a valid title from the churchwardens.—*Abbott, C. J.* "The legislature has provided for the inconveniences experienced in consequence of lands belonging to parishioners, who are not by law a corporation, in certain cases, by the 59 Geo. III. c. 12, s. 17, which enacts, that the churchwardens *and overseers* shall take and hold, in the nature of a body corporate, for and on behalf of the parish, all buildings, lands, and tenements, belonging to the parish. That statute does not extend to this case. I think, therefore, that the churchwardens *alone* had no title to the land, or the rent which issues from it." And see *Rogers v. Pitcher*, 6 Taunt. 202, 1 Marsh. 541, S. P.

22 G. III. c. 83, s. 43. "That it shall and may be lawful for the guardians of the poor of any parish, township, or place, which shall adopt the provisions of this act, with the approbation of the persons within such parish, township, or place, qualified as hereinbefore mentioned, obtained at a public meeting, held for that purpose, to sell or dispose of any house, cottage, or building, which shall have been erected or purchased for the use of any poor person or persons, at the expense of such parish, township, or place, and apply the money arising therefrom for the purposes of this act; and also to remove, by order from a justice or justices of the peace, the person or persons who shall inhabit the same, or any other house or dwelling rented or provided at the expense of such parish, township, or place, if he, she, or they refuse to quit, after receiving fourteen days' notice for that purpose."

By 5 & 6 Will. IV. c. 69, s. 3, (a) in order to insure the due application of the property of parishes and unions, it is enacted, "That it shall be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee, of any dissolved union at the time of its dissolution, or a majority of such guardians or trustees, or persons, if more than one, with the approbation, and subject to the rules, orders, and regulations of the poor law commissioners, to sell, exchange, let, or otherwise to dispose of any workhouses, tenements, buildings, land,

10. *Of Workhouses.*

Indictments.

Bonds.

To constitute a body corporate there must be two overseers *and* a churchwarden.

Churchwardens alone have no title.

Poorhouses may be sold, and occupiers removed.

Power to overseers and guardians of the poor to sell, purchase, and dispose of workhouses, &c.

(a) This statute does not *expressly* repeal former statutes on this subject; but it is more ample than 1 & 2 Geo. IV. c. 56, s. 1, 2.

*Expenditure
by Guardian
in Single and
United
Parishes.*

effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every and any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct; and, in case of a sale, to apply the produce arising therefrom (after deducting the reasonable expenses thereof) towards the purchase or building of any workhouse, or as or in part of the proportion of such parish or union towards the expense of any workhouse erected, purchased, or provided on behalf of such parish or union, or as a loan to the board of guardians of such union, upon the security of the rates, for the purpose of erecting a workhouse, or in liquidation of any debt contracted by such parish or union or dissolved union, or in such other manner for the permanent advantage of such parish or union, or dissolved union, as the said poor law commissioners may approve; and in case of an exchange, the hereditaments to be taken in exchange shall be conveyed to the guardians of such parish or union, or the overseers of such parish, upon the same trusts, and the rents and profits thereof shall be applied to the same purposes as the hereditaments given in exchange were held, and the rents and profits thereof would have been applicable under the provisions of the law or of this act if the same hereditaments had not been exchanged; and it shall be lawful for the said poor law commissioners to direct the mode and proportions on parishes in which any money required for the purchase of any such property shall be raised, paid, and secured, and also to direct the mode in which the persons by whom, and the objects relating to the management of the poor to which the rents, profits, beneficial occupation, or income of such property shall be applied, assigned, or distributed; and wheresoever the workhouse or workhouses of any parish in any union may have become or shall hereafter become convertible to the common use of such union, it shall be lawful for the said poor law commissioners to direct such an annual sum, in the nature of rent or other compensation, to be paid to such parish out of the common fund of the union, and to vary the amount of such annual sum or compensation from time to time as they the said poor law commissioners shall see fit: provided always, that no such sale or exchange or letting of any workhouses, tenements, buildings, or land of any parish shall take place except with the consent of a majority of the rate-payers of such parish, and of the owners of property therein, entitled to vote under and by virtue of the act passed in the fourth and fifth years of the reign of his present Majesty, intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are published and given, such majority to be ascertained in manner provided by the said act: provided also, that every sale and exchange or lease of any such workhouse, tenements, buildings, land, or other property, which may have been made before the passing of this act, with the consent or approbation in writing of the said poor law commissioners, shall be as valid and effectual as if the same had been directed by their order under the authority of this act; and that any monies or rents which have become or shall become payable in respect of any such sale, exchange, or lease, and have not been applied, shall be applied in the same manner as such monies or rents would have been applicable if such sale or exchange or lease had been made under this act."

4 & 5 W. 4, c. 76.

EXPENDITURE BY GUARDIAN IN SINGLE AND UNITED PARISHES.

Guardians to receive money and pay expenses.

22 Geo. III. c. 83, s. 8. "From and after the appointment of such guardian as aforesaid, one or more of the churchwardens or overseers of the poor of every parish, township, or place, which shall adopt the provisions of this act, who shall be approved at some public meeting to be holden as aforesaid, shall receive the money to be collected by virtue of such poor's rates, and

apply the same in manner following; (that is to say), if such parish, township, or place, shall not be united with any other by virtue of this act, such churchwarden or overseer shall pay to the guardian of the poor such sums, from time to time, as he shall have occasion to employ for the purposes of discharging the bills, and all other necessary expenses attending such house or houses, and the poor belonging to such parish, township, or place, and shall take receipts from such guardian for all the money so paid, expressing in every such receipt the purposes for which such money is wanted; and if the said parish, township, or place, shall be united with any other parish, township or place, by virtue of this act, such churchwarden or overseer shall pay from time to time, to the treasurer of such united parishes, townships, or places, their due proportion and *quota* of the several expenses attending the poor and poorhouse therein, under the authority and according to the direction of this act, and take his receipts for such money; or, if it shall be found more convenient, he shall permit such treasurer, from time to time, to draw drafts upon him for such money, in the form contained in the said schedule No. VIII., and pay the same when they become due, specifying in every such receipt and draft the general purposes for which such money is to be applied; all which payments so to be respectively made, shall be allowed to the said churchwarden or overseer, in his accounts with the parish, township, or place, wherein such money shall be raised; and the accounts, as well of the said churchwarden or overseer, as of the said guardian, shall be examined at every monthly meeting, and shall be examined and passed quarterly by the visitor of such poorhouse, after they shall have been verified upon oath before a justice of the peace."

Accounts to be examined, verified on oath, and passed quarterly.

By the 4 & 5 Will. IV. c. 76, s. 29, the commissioners are empowered to ascertain the proportion to be paid by each parish in any *existing* union, and to vary the same from time to time. See Appendix.

Commissioners may vary the proportion in an existing union.

And by 41 Geo. III. c. 9, s. 2, "the guardians of the poor present at a monthly meeting held according to the directions of the said act, with the approbation of the visitor, who shall sign the same, may make an order on the churchwardens or overseers, or collector of the poor's rates, some or one of them, for so much money as shall be necessary for the purposes of the said act; and if the churchwardens or overseers, or person or persons to whom the order shall be directed, shall neglect or refuse to pay the same to the treasurer or guardian to whom the same is made payable, within seven days after it shall be demanded, it shall be lawful for any justice of peace within the division or district, upon proof made on oath of such default, to issue his warrant for levying the same by distress and sale of the goods and chattels of the said churchwardens and overseers, or other person or persons, in like manner as by the 22 Geo. III. c. 83, is provided in case of nonpayment by the guardians of the poor."

Guardian may make money order on overseers, &c. and which may be levied by distress if necessary.

APPOINTMENT OF OFFICERS.

22 Geo. III. c. 83, s. 10. "That the guardians of the poor for the several parishes and townships which shall be so united as aforesaid, shall meet as soon as conveniently may be after such agreement shall have been made, to consider of three proper persons, respectable in character and fortune, fit to be put in nomination for the office of visitor of such poor house; and two or more of such guardians shall, as soon as conveniently may be after such meeting, apply to two justices of the peace acting for the limit wherein such poorhouse shall be, and produce to them the said agreement, and the names of the persons whom they shall desire to recommend, which justices shall then, or within three days after, appoint one of such persons so recommended to be visitor, in the form contained in the said schedule No. VII., or to that or the like effect; but if he shall refuse to accept that office, they shall then appoint one other of the persons so named; and if he shall decline it, they shall appoint the third person named in such list; and if he shall decline it, the guardians of the said several parishes, townships, and places shall, and they are hereby required to serve that office monthly, by rotation, subject to

Visitor of workhouse to be appointed, and his duties.

Appointment
of Officers.

Visitor to be free
from certain
offices.

Treasurer to be
appointed from
among the guar-
dians of united
parishes. See
41 G. 3, c. 9, s. 3,
post.

His duties.

Account.

the control of the justices of the limit where such poorhouse shall be; and every such visitor, if not a guardian, is hereby authorized to nominate some discreet and proper person to be his deputy or assistant, if he shall think fit, in the form contained in the said schedule No. IX.; and every such deputy or assistant shall, in the absence of such visitor, and under his direction, act as inspector of the several matters so committed to the care of the visitor, and shall make his report thereof, from time to time, to him, for his better information, and render him all the assistance in his power; and every visitor so to be appointed shall superintend every such house or houses, and settle and adjust the accounts between the said guardians of the poor and the treasurer of such house, if any question or dispute shall arise respecting the same; and also shall settle and adjust all doubts and questions which may arise concerning the persons which ought to be sent to such house or houses, according to the intention of this act, and by every prudent means in his power enforce and promote the rules, orders, regulations, directions, and provisions established, enacted, and formed by and under this act, for the better accommodation and relief of the poor, and the preventing all unnecessary expenses and burthens on the said parishes, townships, and places: and every such governor, guardian, and treasurer is hereby required to observe and obey the directions which he shall from time to time receive from the visitor so to be appointed, touching the several matters aforesaid: and, where any act shall be required to be done by a justice of peace, such visitor, if not a justice, or his deputy or assistant, shall apply to some neighbouring magistrate to do the same: and every person so to be nominated or appointed visitor or deputy visitor as aforesaid, as an inducement to his undertaking and executing that office, shall be freed and discharged from serving the office of constable, and all parochial offices, and also from serving upon juries at the assizes or quarter sessions, so long as he shall continue in that office; and a certificate under the hand of a justice of the peace acting for the limit wherein he executes such office, in the form contained in the said schedule No. X., shall be admitted as evidence of his serving the office."

Sect. 11. "That if two-thirds, in number and value as aforesaid, of the owners or occupiers of lands, tenements, or hereditaments, within any single parish, township, or place, which shall adopt the provisions of this act in manner aforesaid, shall desire to have a visitor (a) appointed, and shall nominate and recommend to the justices of the limit three persons properly qualified for that office, the justices, upon application to them in manner aforesaid, shall appoint one of the persons so recommended, in the manner hereinbefore directed, concerning parishes, townships, and places so united as aforesaid."

Sect. 12. "That the guardians of the several parishes and townships united for the purposes of this act, shall recommend to the justices one of their own body to be treasurer of the poorhouse; and it shall and may be lawful for two justices of the limit to appoint the guardian, so recommended, or any other of the guardians whom they shall think better qualified, to that office, in the form contained in the said schedule No. VII., or to that or the like effect; which treasurer shall give sufficient security, to the satisfaction of the justices, to the other guardians, and their successors, for his duly accounting for the money which shall come to his hands; and shall keep the accounts, receive the money to be contributed by each parish and township, and pay or discharge the several bills and expenses which shall be allowed and ordered to be paid by the guardians, at their monthly meeting: and shall lay his accounts before the guardians, at every such meeting, for their perusal and approbation; and shall, once in every year, within fourteen days before the *Michaelmas* quarter sessions of the peace, for the county, riding, division, city, or place, where such poorhouse shall be situate, make out, or cause to be made out, a just and fair account of the expenses attending the same, distinguishing them under the several heads herein specified; and also an account of the number of poor persons, distinguishing their age and sex,

(a) The election of visitors is under the regulation of the commissioners. 4 & 5 Will. IV. c. 76, s. 41.

Appointment
of Officers.

which shall be contained in every such house at the time of making such account, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding; which shall be laid before the visitor, and signified under his hand, if he approves the same, and shall afterwards be transmitted to the clerk of the peace, or town clerk, of such county, riding, division, city, or place, before or at the time of the said quarter sessions, and be by him laid before the court there for their inspection: and every such treasurer shall be allowed, for his trouble in executing that office, such annual sum not exceeding ten pounds, as the visitor, if not a guardian, shall think fit; and if no such visitor, as two justices of the peace for the limit shall appoint."

Salary.

By the 41 Geo. III. c. 9, s. 3, "any two justices for the district or division within which any such parish shall be situate, to whom the expediency of such appointment shall be made appear, by application from two-thirds in number and value of the owners and occupiers of lands, tenements, and hereditaments, qualified as by the said act is directed, to appoint a treasurer for the poorhouse of such parish, with a salary not exceeding ten pounds, according to the form prescribed in the schedule to the said act, in the case of united parishes." See 4 & 5 Will. IV. c. 76, s. 41.

Treasurer of parish workhouse may be appointed with salary.

By the 22 Geo. III. c. 83, s. 9, "it shall and may be lawful for two or more justices of the peace for the limit wherein such poorhouse shall be situate, and they are hereby required, as soon as conveniently may be, after such agreement shall have been made as aforesaid for adopting the provisions of this act, either by a single parish or township, or by two or more parishes or townships, upon application made to them by two or more of the persons who shall have signed such agreement, and upon producing the same to them, to appoint one of the persons recommended for governor of such poorhouse, (in the form contained in the said schedule, No. VII., or to that or the like effect,) who shall have the care, management, and employment of the poor persons to be sent thither, and shall be allowed such salary or wages for his trouble as shall be specified in the said agreement; and it shall and may be lawful for the visitor of such poorhouse, with the consent of the guardians, or the major part of them, or for two or more justices of the peace for such limit, where a guardian shall be visitor, to remove the governor of such poorhouse, upon complaint, and sufficient proof, of misbehaviour or incapacity in the execution of his office."

Governor of workhouse to be appointed,

and removable for misbehaviour, &c.(a)

By 50 Geo. III. c. 50, s. 3, "it shall be lawful for the justices in any such special session, upon the application of the overseers of the poor of any parish or place, or of the major part of them, to appoint the keeper of the workhouse of any such parish or place to be the governor thereof; and the keeper so appointed, so long as he shall continue keeper of such workhouse, until the justices in any such special session shall revoke such appointment, (which they are hereby empowered to do,) shall have, use, and exercise the powers and perform the duties by the said act of the 22 Geo. III. c. 13, (*vide post*), vested in and imposed upon governors of the poor."

Justices may appoint the keeper of the workhouse to be the governor.

22 Geo. III. c. 83, s. 14. enacts "that the offices of guardian, governor, visitor, or treasurer, to which any person shall be appointed under the authority of this act, shall determine in *Easter* week next after the respective persons shall be appointed thereto, on the day upon which the public meeting for such parish, township, or place, shall be held there; when the persons who, according to this act, are qualified and have a right to recommend another person to the justices, to be appointed to such office, shall either agree with the persons who held the same, to continue in such office, or shall proceed to recommend others, in the manner hereinbefore directed, as if such person had died."

Officers, how long to continue.

Sect. 13. "That when and as often as any vacancy shall happen in any of the offices aforesaid, by death, resignation, or removal, meetings shall be called, and recommendations offered to the justices in manner aforesaid; and

Vacancies, how to be filled up.

(a) The commissioners have also the power to remove him. Sect. 48 of 4 & 5 Will. IV. c. 76.

Rules.

they shall proceed, so soon as conveniently may be, in the manner before directed, to appoint a fit and proper successor to the person so dying, declining to act, or so removed as aforesaid."

RULES.

Special rules and forms to be observed.

Sect. 34 enacts, "that the rules, orders, and regulations, specified and contained in the schedule hereunto annexed, shall be duly observed and enforced at every poorhouse or workhouse to be provided by virtue of this act, with such additions as shall be made by the justices of the peace of the limit wherein such house or houses shall be situate, at some special session; provided that such additions shall not be contradictory to the rules, orders, and regulations established by this act, and provided that the same be not repealed by the justices at their quarter sessions of the peace; and, for the purpose of having them more generally known, and more strictly attended to, the governors of every such house or houses shall, and are hereby required to cause the same to be printed in plain legible characters, and fixed up in some conspicuous part of every such house or houses."

Forms to be observed.

The forms of proceedings directed by the act, are given in the appendix of forms at the end of this volume.

Two justices in petty sessions may direct the regulations prescribed by recited act to be observed.

By 49 Geo. III. c. 124, s. 5, reciting "that whereas certain rules, orders, bye-laws, and regulations are appointed to be observed and enforced in every poorhouse established under the authority of 22 Geo. III.; and whereas it is expedient that such rules, orders, bye-laws, and regulations should be extended to poorhouses and workhouses established in other parishes; it is enacted, that any two or more of his Majesty's justices of the peace may at any petty sessions direct such rules, orders, bye-laws, and regulations, or any of them, to be observed and executed in any parishes within their respective divisions or districts, as fully as in those incorporated by the said act.

Two justices may direct the regulations specified in schedule of 22 G. 3, c. 83, to be observed in workhouses where no master or mistress is appointed to superintend; and may alter such regulations.

50 Geo. III. c. 50, s. 1, after reciting statutes 22 Geo. III. c. 83, and 49 Geo. III. c. 124, s. 5, and that it is expedient that the benefit of 22 Geo. III. c. 83, for the government of poorhouses and workhouses should be extended to parishes which shall not have adopted the provisions of the said acts, enacts, "that any two or more of his Majesty's justices of the peace, within their respective limits, may at any special session direct the rules, orders, and regulations, in the schedule to the said act of the 22 Geo. III. specified and contained, or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poorhouses, or any houses set apart for that purpose, although there should be no master or mistress to superintend the same, of any parish or place within their respective divisions or districts, as fully and effectually as the rules and orders by the said act of the 22 Geo. III. established, are to be observed and enforced within the parishes adopting the provisions of the same act; and that it shall be lawful for two or more such justices in any special session, from time to time as they shall see occasion, to add to and alter the rules, orders, and regulations which shall at any special sessions have been made and ordered to be observed; provided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders, and regulations established by the said act of the 22 Geo. III., and provided that the same shall not be repealed by the justices at their quarter sessions of the peace; and for enforcing and carrying into execution such rules, orders, and regulations in every parish and place where the same shall be established by virtue of this act, every justice of the peace shall for that purpose have the powers by the said act of the 22 Geo. III. vested in visitors of the poor; and all churchwardens and overseers within their respective parishes and townships, shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor."

Breach of rules under this act to be punished.

By 50 Geo. III. c. 50, s. 5, "any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as is by the said act directed for the breach of the rules and orders to be enforced under the before-recited act of 22 Geo. III. c. 83. [See 54 Geo. III. c. 170, s. 7, *post*, p. 58.]

4 & 5 W. IV. c. 76, s. 42, authorizes the commissioners to make rules and regulations to be observed at every workhouse already established, or hereafter to be established, for the government thereof, and the nature and amount of the relief to be given to and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to alter the same, and make new; and to alter, at their discretion, any of the rules and regulations contained in the schedule to the 22 Geo. III. c. 83, and also to alter or rescind any rules and regulations heretofore made in pursuance of the said act, or any local act relating to workhouses or the relief of the poor; and all rules made by the commissioners shall be binding, as if the same were specifically embodied in this act. If any such rule shall be, at the time of issuing the same, directed to and affect more than one union, the same shall be considered as a general rule. (a)

And sect. 43 empowers justices to inspect and examine such workhouse, for the purpose of ascertaining whether the rules or bye-laws have been duly observed, as well as for such other purposes as justices are now authorised to visit workhouses under 30 Geo. III. c. 49; and if such rules or bye-laws have not been duly observed, such justice may summon the party offending before any two justices to answer the complaint, and upon conviction the party so offending shall be liable to such penalties and punishments as are hereinafter prescribed against parties wilfully neglecting or disobeying the rules of the commissioners. Where no rules or bye-laws shall have been directed by the commissioners to be observed in the workhouse, nothing in this act shall be construed to prevent any justice, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and certifying the condition of the same and of the poor therein, in such manner as any of them are authorized to do by the 30 Geo. III. c. 49.

Justices and others Visiting Workhouses.

Commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force or to be made hereafter.

Rules, &c. affecting more than one union to be deemed general rules.

Justices empowered to see bye-laws enforced, and to visit workhouses, pursuant to 30 G. 3, c. 49.

The power given to justices, &c. to visit workhouses reserved where commissioners' rules, &c. are not in force.

JUSTICES AND OTHERS VISITING WORKHOUSES.

By 30 Geo. III. c. 49, s. 1, "it shall and may be lawful to and for any of his Majesty's justices of the peace, or any physician, surgeon, or apothecary, for that purpose authorised by warrant under the hand and seal of any such justice or justices, or for the officiating clergyman (b) of the parish or place, duly authorised as aforesaid, at all times, in the day time, to visit any parish workhouse, or house kept or provided for the maintenance of the poor of any parish or place, within the county, riding, liberty, or division, wherein such justice or justices shall be resident and shall have jurisdiction, to examine into the state and condition of the poor people therein, and the food, clothing, and bedding of such poor people, and the state and condition of such house or houses; and if upon any such visitation, the said justice or justices, or persons duly authorised as aforesaid, shall find any cause or occasion of complaint, that then and in such case such justice or justices, or persons duly authorised as aforesaid, shall, and they are hereby authorised and empowered, if he or they shall think fit, to certify the state and condition of such workhouse or poorhouse, and the state of the poor therein, and of their food, clothing, and bedding, to the next quarter sessions of the peace to be held for such county, riding, liberty, or division, wherein such workhouse or poorhouse shall be situate, under his or their hands and seals respectively; and such justice or justices, or other persons duly authorised as aforesaid, shall cause the overseers of the poor, or master or governor of the said workhouse

Justices, &c. may visit parish workhouses.

(a) It is understood that the commissioners have issued no general rules, see note (a), p. 62.

(b) It shall be lawful for any licensed minister of the religious persuasion of any inmate of any workhouse at all times in the day, on the request of such in-

mate, to visit such workhouse, for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion. 4 & 5 Will. IV. c. 76, s. 19.

*Refusal of
Pauper to go
into the Work-
house.*

Finding the poor
afflicted with con-
tagious or infec-
tious disease.

or poorhouse of such parish or place, to be summoned to appear at the same sessions, to answer such complaint; and the justices assembled at such quarter sessions, on hearing the parties on any such complaint, shall and may, and they are hereby authorised to make such orders and regulations, for the removing of any cause of complaint contained in such certificate as aforesaid, as to them shall seem meet; and all the parties concerned shall, and they are hereby required to abide by and perform such orders and regulations as shall be so made by the justices at the said sessions."

Sect. 2. "Provided, that in case any justice or justices of the peace, or persons duly authorised by warrant as aforesaid, shall, upon any such visitation, find any of the poor in any parish workhouse or poorhouse afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then and in such case or cases, if such visitation shall be made by a justice of the peace, it shall and may be lawful to and for such justice, and he is hereby directed and required to apply to one or more other justice or justices of the peace, in the county, riding, liberty, or division, and certify to him or them the state and condition of the poor in such parish workhouse or poorhouse; or if such visitation shall be made by the persons duly authorised as aforesaid, then and in such case or cases it shall and may be lawful to and for such persons, and they are hereby directed and required to apply to two or more justices of the peace in such county, riding, liberty, or division; and thereupon the said justices shall and may, and they are hereby authorised to make such order for the immediate procuring medical or other assistance, or of sufficient and proper food, or for the separation or removal of such poor as shall be afflicted with any contagious or infectious disease, in such manner as they the said justices, under their hands and seals, shall think proper to direct, until the next quarter sessions of the peace to be held in and for the said county, riding, liberty, or division, wherein such workhouse or poorhouse shall be situate; at which quarter sessions of the peace the said two justices are to certify the same, under their hands and seals respectively, to the justices assembled at such quarter sessions, who are hereby authorised and required to make such order for the further relief of the poor in such parish workhouse or poorhouse, as to the justices assembled at such quarter sessions shall seem meet and proper; and the charges and expenses of relieving such poor shall be, and are hereby directed to be paid out of the poor's rate of such parish, in such manner as the said justices assembled at such quarter sessions shall direct."

Sect. 3. "Provided, that nothing herein contained shall extend to any poorhouse or workhouse in any district or districts which have been, or may be hereafter, incorporated or regulated by any special act or acts of parliament."

We have seen that the justices may enforce the rules of the commissioners and bye-laws in the workhouse, p. 51.

REFUSAL OF PAUPER TO GO INTO THE WORKHOUSE.

Refusal to go to
the poorhouse.

9 Geo. I. c. 7, s. 4. "And if any poor person of any parish, or united parishes, &c., where such house shall be, shall refuse to be lodged, kept, or maintained in such house or houses, he shall be put out of the parish-book, and shall not be entitled to ask or receive relief from the churchwardens and overseers."

Local poor acts
passed since the
beginning of the
reign of Geo. I.
compelling poor to
go to the work-
house;

or to remain
there;

56 Geo. III. c. 129, enacts, "that all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any poor person or persons, *other than such as shall actually apply for and receive parochial relief*, are compelled or made compellable to go or remain in any house of industry or workhouse; or whereby any poor person or persons may be detained or kept in any house of industry or workhouse; at the discretion of the governors or directors thereof, or of the churchwardens or overseers of the poor of any district, parish, township, or hamlet, after such persons are capable of main-

taining themselves; or whereby any poor person or persons may be compelled to remain in any house of industry or workhouse, until the charges and expences to which any district, parish, township, or hamlet may have been put or become liable or chargeable for the maintenance or support of such poor person or persons, or any of his or her family, shall be repaid or reimbursed or satisfied by the earnings or labour of such poor person or persons; or whereby any poor child or children whomsoever is or are rendered liable to be apprenticed to any governor, director, or master of any such house of industry or workhouse; or whereby any parish, township, or hamlet, at a greater distance than ten miles from such house of industry or workhouse, shall hereafter be empowered or authorised to become contributors to, or to take the benefit of such house of industry or workhouse; or whereby any directors, governors, guardians, or masters of any such house of industry or workhouse, are authorised or empowered to hire out any poor person or persons of full age, or to contract or agree with any person or persons to have and take the profit of the labour of such poor person or persons; shall be wholly and severally, and the same are hereby wholly and severally repealed.

Rex v. Carlisle, (cited in *Rex v. Haigh*, 3 T. R. 637,) 2 Nol. P. L. 357. The defendant was indicted for disobeying an order of sessions. *Jane Carr*, the pauper, having been delivered of two bastard children, was taken into the poorhouse of the parish of *St. Mary's* in *Carlisle*, which had been there established according to the 9 Geo. I. c. 7. There she and her children were maintained for a year and a half. Then the parish officers agreed to allow her 1s. a week towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poorhouse. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take 6d. a week. But the parish officers persisted in giving her no relief, unless she would come again into the poorhouse. Whereupon she applied to the quarter sessions, who made an order on the overseers to pay her 1s. a week towards the maintenance of herself and her two bastard children, until further order. The defendant, one of the overseers, refused, but at the same time offered (as he had done several times before) to take her and her children into the poorhouse. The question reserved at the assizes for the opinion of the judges was, "whether, under these circumstances, the defendant was by law empowered to refuse payment of such weekly allowance?" And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that, under the circumstances of this case, the defendant was by law empowered to refuse payment of such weekly allowance.

Rex v. Haigh, 3 T. R. 637. The defendants were indicted for disobeying an order of a justice, for the payment of a weekly sum to *Mary Gray* for the maintenance of her bastard child. It appeared that the mother applied for relief for her child only; and the question was, "whether the defendants were bound to obey the order, as the mother of the child refused to go into the workhouse?" For the prosecutor, *Rex v. North Shields*, Cald. 68, was relied upon; and for the defendants, *Rex v. Carlisle*, (*supra*.) Lord *Kenyon*, C. J., "the only question is, for whom was the relief asked? for such person only is, according to the terms of this act of parliament, to be sent to the workhouse. It is stated that the child only wanted relief: the application indeed was made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is, therefore, very distinguishable from *Rex v. Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act of parliament, if, when all the children of a family, except one, were capable of supporting themselves, and that one was unable to maintain itself, and was under the necessity of receiving relief, the whole family were to be sent to the workhouse."

Rex v. North Shields, Doug. 331; Cald. 68. By order of a justice the overseers of *North Shields* were directed to pay to *Ann*, wife of *Thomas Irwin*, 2s. 6d. weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one fourteen months. The overseers appealed. Order confirmed.

Refusal of Pauper to go into the Workhouse.

or rendering them liable to be apprenticed to governor, &c.; or that distinct parishes shall not unite; or contracting for their labour;

repealed.

Paupers wanting relief, and refusing to go into the parish workhouse, the parish officer may refuse giving weekly allowance.

When a mother asks for relief for her child only, and not for herself, the parish officers cannot compel her to go into the workhouse; and if she refuse, they cannot refuse the allowance to the child.

Whether a mother asking relief for her children be compellable to go with them to the poorhouse?

*Refusal of
Pauper to go
into the Work-
house.*

Case:—There was, at the time of making the order, within the township, a poorhouse, established according to the 9 Geo. I. c. 7, into which the parish officers were willing to receive the pauper, with her three children, and offered so to do; but she refused to go into the house with them. She had another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself. Her husband was a mariner, and prisoner in *France*, and the order stated her inability to provide for the said three children. These children, being nurse-children, the opinion of the sessions was, that they ought not to be separated from their mother, and that the mother, not seeking relief herself, was not compellable to go into the workhouse. It was urged that in *Rex v. Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute.—*Willes, J.*, said, this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *Rex v. Carlisle*.—*Ashurst, J.*, thought the act extended to the present case: that maintenance for the children was relief to the mother. There might be great inconvenience if the Court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the workhouse, idleness would be thereby promoted among artificers and manufacturers.—*Buller, J.*, on the contrary, thought the distinction between this case and that of *Rex v. Carlisle* to be clear. The act was meant in case of parishes; but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the parish is not entitled to the labour of a whole family, because one of them might want relief.—The case stood over for further argument.

ADMISSION OF PAUPERS INTO WORKHOUSE.

Occasional relief ordered by the justices, upon refusal of guardian to relieve. (a)

22 Geo. III. c. 83, s. 35, 37. “That it shall and may be lawful for any justice of the peace, on complaint made upon oath, by or on the behalf of any poor person belonging to any parish, township, or place, that the guardian, upon application made to him, hath refused such poor person proper relief, and after enquiring into the condition and circumstance of such poor person upon oath, either to order him or her, by writing under the hand of such justice, some weekly or other relief, or direct such guardian to send such poor person to the poorhouse, in case he or she shall appear a fit object to be kept and provided for there, according to the true intent and construction of this act; which order shall be complied with, or sufficient cause shown to the contrary, before such justice, by such guardian, within two days after he shall receive the same; and if any guardian shall, upon due notice of any such order, refuse or neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of five pounds. And be it further enacted, that out of the penalty hereby inflicted upon the guardian, for disobeying the order of a justice of the peace for the relief and maintenance of any poor person, so much thereof as the justices of the peace who shall convict such offender shall direct to be paid to such poor person to whom such relief was ordered, shall be paid to him or her accordingly, and the remainder applied in such manner as the other penalties are hereby directed to be disposed of.”

Penalty on guardian for disobeying order for relief.

If it appear that the complainant is an idle person, the

Sect. 35. “Or if it shall appear to such justice, that the person so complaining, or on whose behalf such complaint is made, is able and willing to work, but wants employment, in that case it shall and may be lawful for such justice to order the guardian to procure him or her maintenance and employment in the manner herein-before directed; and if any guardian shall, upon due notice of any such order, refuse or neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of five pounds. Or if it shall appear to such justice that the person making such complaint, or on whose

(a) These sections do not appear to be affected by the 53 and 54 sections of 4 & 5 Will. IV. c. 76.

behalf such complaint is made, is an idle or disorderly person, and has not used proper means to get employment, it shall and may be lawful for the justice, after examining such person, and hearing the whole circumstances of the case, to commit such person to the house of correction for any time not exceeding three calendar months, nor less than one calendar month; or if it shall appear to such justice upon inquiry as aforesaid, that the husband or father of such person making complaint, or on whose behalf complaint shall be so made, for want of relief, is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses, or places of bad repute, does not maintain his wife or children, and suffers them to be reduced to want, it shall and may be lawful for such justice of the peace, in like manner, to commit the husband of such poor woman, or the father of such poor child or children, to the house of correction, for any time not exceeding three calendar months, nor less than one calendar month."

Admission of Pauper into the Workhouse.

justice may commit him to the house of correction.

Sect. 36. "Provided, that when any complaint or application shall be made to a justice of the peace, for the relief of any poor person, within any parish, township, or place, for which a visitor shall be appointed, such justice shall not summon the guardian to appear before him, unless application shall have been first made, by the person so complaining, to the guardian, and if he refuses redress, to the visitor, (it being part of his duty to adjust matters of that sort,) who shall order relief if he thinks it necessary, either within or out of the poorhouse as he shall judge right; but if sufficient relief shall not be so given or ordered, the poor person complaining, or on whose behalf such complaint shall be made, shall be redressed by such justice in the manner herein-before directed." But 59 Geo. III. c. 12, s. 27, enacts "that if it shall be made to appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the parish or united parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, it shall be lawful for such justice to summon the guardian to appear before him to answer such complaint, and to proceed thereon, and make such order therein, as the case shall require, in like manner as in cases where application hath been made to the visitor, in the manner by the said act directed."

Application to be made first to guardian, then to the visitor, before a justice makes any order.

Rex v. Laughton, 2 M. & Sel. 324. The defendant having been convicted by two justices at the special sessions, and fined 30s. for disobeying an order of a justice, under 33 Geo. III. c. 55, for the payment of 4s. for the relief of *Mary Lewis* and her children, appealed to the sessions. The conviction was confirmed. Case:—The parish of *West Walton* is incorporated under 22 Geo. III. c. 83, for the maintenance of its poor; and has a poorhouse fitted up for the reception of the poor. Application for relief being made by *M. Lewis* for herself and her two children, the guardian and the visitor directed them to be received into the poorhouse; whereupon the justice made the above order, directing a pecuniary relief out of the poorhouse. On the appeal, the question stated for the opinion of the Court was, "whether the magistrate had power and authority, under 22 Geo. III. c. 83, to make the said order for the pecuniary relief of the paupers out of the poorhouse?"—After hearing counsel, Lord *Ellenborough*, C. J., said, The justice does not affect to determine upon the ground of its being a qualified refusal of relief. If proper relief has not been refused, the justice has not any jurisdiction. The visitor, to whom it is referred by law, as a part of his duty, to say whether the relief shall be given in or out of the poorhouse, has decided that question, and has determined it to be proper relief. If it depended on the choice of the pauper, the poorhouse would be useless. The visitor having adjusted it, the matter was at an end, and not within the cognizance of the magistrate, and therefore the infliction of this penalty was not warranted.—*Le Blanc*, J., The 7th section of the statute, which has been relied on in argument as putting the guardian on the footing of an overseer, must be taken with reference to the general policy of the act in which it is contained, and when the 36th section of the same act directs that application shall be made both to the guardian and visitor, before any application is made to a justice, and when it

The visitor and not the justice is to determine whether relief shall be given in or out of the poorhouse.

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The guardians shall pay off a twentieth part of the borrowed money under 22 Geo. 3, c. 83.

Admitting paupers.

What paupers admissible to poor-houses.

Pauper children, how to be taken care of.

No lunatic, insane person, or dangerous idiot, to be detained in a workhouse more than fourteen days.

Idle persons neglecting to provide for their families may be prosecuted.

adds that it is the duty of the visitor to adjust matters of that sort, that is, whether it is most proper to relieve in or out of the poorhouse, the liability of the guardian as overseer, imposed by the 7th section, must be controlled by the subsequent clause. The visitor must always determine whether the party is to be relieved in or out of the poorhouse, otherwise the whole policy of the act would be avoided.—*Bayley and Dampier, Js.*, concurred. Order of sessions quashed. See *Rex v. Keer*, 5 T. R. 159.

By 22 Geo. III. c. 83, s. 28, "that every person or persons, to be sent to any house or houses to be provided under the authority of this act, shall, at the time of his or her entering such house, deliver, or cause to be delivered, to the governor thereof, or to his assistant, if any, an order, signed by one of the guardians of the poor of the parish, township, or place, from which such person shall come, for the admission of such person or persons, in the form or to the effect contained in the said schedule, No. XII.; which order shall be carefully kept by the governor, and entered by him in a book to be provided for that purpose."

By s. 29, "that no person shall be sent to such poor house or houses, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour; and except such orphan children as shall be sent thither by order of the guardian or guardians of the poor, with the approbation of the visitor; and except such children as shall necessarily go with their mothers thither for sustenance."

Sect. 30. "That all infant children of tender years, and who, from accident or misfortune, shall become chargeable to the parish or place to which they belong, may either be sent to such poorhouse as aforesaid, or be placed by the guardian or guardians of the poor, with the approbation of the visitor, with some reputable person or persons in or near the parish, township, or place, to which they belong, at such weekly allowance as shall be agreed upon between the parish officers and such person or persons with the approbation of the visitor, until such child or children shall be of sufficient age to be put into service, or bound apprentice to husbandry, or some trade or occupation; and a list of the names of every child so placed out, and by whom and where kept, shall be given to the visitor; who shall see that they are properly treated, or cause them to be removed, and placed under the care of some other person or persons, if he finds just cause so to do; and when every such child shall attain such age, he or she shall be so placed out, at the expense of the parish, township, or place, to which he or she shall belong, according to the laws in being: provided nevertheless, that if the parents or relations of any poor child sent to such house, or so placed out as aforesaid, or any other responsible person, shall desire to receive and provide for any such poor child or children, and signify the same to the guardians at their monthly meeting, the guardians shall, and are hereby required to dismiss, or cause to be dismissed, such child or children from the poor house, or from the care of such person or persons as aforesaid, and deliver him, her, or them, to the parent, relation, or other person so applying as aforesaid: provided also, that nothing herein contained shall give any power to separate any child or children, under the age of seven years, from his, her, or their parent or parents, without the consent of such parent or parents."

4 & 5 Will. IV. c. 76, s. 45, enacts "that nothing in this act contained shall authorise the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: provided always, that nothing herein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum."

22 Geo. III. c. 83, s. 31, "that all idle or disorderly persons, who are able, but unwilling, to work or maintain themselves and their families, shall be prosecuted by the guardians of the poor of the several parishes, townships, and places, wherein they reside, and punished in such manner as idle and disorderly persons are directed to be by the statute made in the seventeenth

year of the reign of his late majesty King George the Second; and if any guardian shall neglect to make complaint thereof, against every such person or persons, to some neighbouring justices of the peace, within ten days after it shall come to his knowledge, he shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than twenty shillings, one moiety whereof, when recovered, shall be paid to the informer, and the other moiety to be disposed of as the other forfeitures are hereinafter directed to be applied."

Admission of Pauper into the Work-house.

Sect. 32. "That where there shall be, in any parish, township, or place, any poor persons who shall be able and willing to work, but who cannot get employment, it shall and may be lawful for the guardian of the poor of such parish, township, or place, and he is hereby required, on application made to him by or on behalf of such poor person, to agree for the labour of such poor person or persons, at any work or employment suited to his or her strength and capacity, in any parish, township, or place, near the place of his or her residence, and to maintain, or cause such person or persons to be properly maintained, lodged, and provided for, until such employment shall be procured, and during the time of such work, and to receive the money to be earned by such work or labour, and apply it in such maintenance, as far as the same will go, and make up the deficiency, if any; and if the same shall happen to exceed the money expended in such maintenance, to account for the surplus, which shall afterwards, within one calendar month, be given to such poor person or persons who shall have earned such money, if no further expenses shall be then incurred on his or her account to exhaust the same. And in case such poor person or persons shall refuse to work, or run away from such work or employment, complaint shall be made thereof by the guardian to some justice or justices of the peace in or near the said parish, township, or place; who shall enquire into the same upon oath, and on conviction punish such offender or offenders, by committing him, her, or them to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months, nor less than one calendar month."

Persons not able to get employment, may be provided therewith by guardians.

Sect. 33. "That the guardian of the poor for any parish, township, or place, adopting the provisions of this act as aforesaid, shall provide, at the expense of such parish, township, or place, suitable and necessary clothing for the persons sent by him to such poorhouse as aforesaid; and in case of his neglect so to do, the governor or one of the guardians of every such house shall make complaint thereof to some neighbouring justice of the peace, who shall summon the guardian so making neglect to appear before him to answer the same complaint, and direct him to provide such clothing as shall to such justice appear necessary; and if such guardian shall make default in providing such clothing, within ten days after such direction, it shall and may be lawful for such justice of the peace to direct the governor of such poorhouse, or the guardian so making such complaint, to provide the same, and to demand from such guardian so making neglect, the charges and expences of such clothing; and in default of payment thereof, upon demand made, it shall and may be lawful for such justice or justices of the peace to levy the same, and the costs and charges attending the recovery thereof, by distress and sale of the goods and chattels of every such guardian so making default."

Clothing suitable to be provided by guardians.

By 22 Geo. III. c. 83, s. 24, "that the poor persons who shall be sent to every such house, by virtue and under the authority of this act, shall be maintained therein at the general expense of the respective parishes, townships, and places, so adopting the provisions of this act as aforesaid, according to the terms, and in the proportions, directed and prescribed by this act. And that the treasurer, with the assistance of the governor of every such house, to be appointed as aforesaid, shall provide all fit and necessary provisions for the maintenance of such poor, and keep an account thereof."

Maintenance by respective parishes.

CONDUCT OF MASTER AND INMATES.

The master is removable by the commissioners, 4 & 5 Will. IV. c. 76, s. 51; and he is required to keep a register; see s. 55, Appendix.

*Conduct of
Master and
Inmates.*

Penalty on em-
bezzling or wil-
fully damaging
goods.

Power of justices
to commit offend-
ers.

Masters, &c. of
poorhouse not to
punish or confine
beyond a limited
time.

Confining the
poor by chains or
manacles unlaw-
ful.

Remedy against
pawning goods,
&c.

Property therein
vested in over-
seers. (a)

Not to repeal
provisions in
local acts.

50 Geo. III. c. 50, s. 4. "If any person who shall be sent to any poor-house or workhouse shall embezzle, or wilfully waste, spoil, or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer of the poor or keeper of the said workhouse, any clothing, goods, or materials provided for the use of such poorhouse, or of any of the poor therein, complaint thereof may be made upon oath to one or more justices of the peace acting for the district or division in which such parish shall be situate; and such justices are hereby authorised to hear such complaint, and upon conviction to commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days."

54 Geo. III. c. 170, s. 7, enacts "that it shall not be lawful for the master, governor, or other person entrusted with the superintendence of any house for the reception of poor persons, or the churchwarden, overseer, or other persons elected, constituted, or appointed, by or under the authority of any act or acts of parliament for the control or management of the poor of any district, parish, township, or hamlet, to punish with any corporal punishment whatsoever, any adult person or persons under his, her, or their care or charge, for any offence or misbehaviour whatsoever; or to confine any such person or persons whatsoever, for any offence or misbehaviour, for any longer or greater space of time than twenty-four hours, or such further space of time as may be necessary, in order to have such person or persons before a justice of the peace: any thing in any act or acts of parliament contained to the contrary in any wise notwithstanding."

And 56 Geo. III. c. 129, s. 2, enacts "that it shall not be lawful for any governor, director, guardian, or master of any house of industry or workhouse, on any pretence, to chain, or confine by chains or manacles, any poor person of sane mind."

55 Geo. III. c. 137, s. 1, after reciting "that many persons, received into public workhouses established for the relief, maintenance, and employment of the poor, pawn and dispose of their clothes and apparel, and the goods and chattels deposited in or belonging to such workhouses; and poor persons relieved by having clothes and apparel given them by the officers of parishes, frequently pawn and sell the same; and by the laws now in force, no punishment can be inflicted on them, or on the person or persons buying or receiving the same into pawn; for remedy whereof" it is enacted "that the property of and in all and singular the goods, chattels, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had and to be had, bought, procured, or provided for the use of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall be and the same is hereby vested in the overseers of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places for the time being, and their successors in office, for the purposes of this act, who are hereby empowered to bring, or cause to be brought, any action or actions, or to prefer or order the preferring of any bill or bills of indictment against any person or persons who shall steal, take, or carry away, or buy or receive any such goods, chattels, provisions, clothes, linen, furniture, wearing apparel, tools, utensils, materials, or things whatsoever, as aforesaid, or any part thereof; and in every such action and indictment the said goods, chattels, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things, shall be laid or described to be the property of the overseers of the poor for the time being of such parish or parishes, township or townships, hamlet or hamlets, place or places, without stating or specifying the name or names of all or any of such overseers: provided always that nothing herein contained shall extend to repeal any of the provisions contained in any act or acts of parliament, whereby the property of and in any such goods, chattels, furniture, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things, is or may be vested in any other person or persons jointly with or independent of the

(a) Similar provision as to indictments, 7 Geo. IV. c. 64, s. 16.

overseers of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places."

*Conduct of
Master and
Inmates.*

Parish officers
may cause goods,
&c., to be mark-
ed.

Sect. 2 enacts "that the overseers of the poor, or other person or persons who may be appointed for the ordering, regulating, managing, or providing for the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, jointly with or independent of such overseers of the poor, shall or may, and they are hereby authorised and empowered to cause all such goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things capable of being marked, and from time to time belonging to such overseers or other person or persons, to be marked, stamped, or branded with the word 'workhouse,' and such other mark or marks as they shall think proper for identifying the parish or parishes, township or townships, hamlet or hamlets, place or places, by which the same shall have been provided: And if any pawnbroker or other person or persons shall knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to whom the same shall have been given by the overseers of the poor, or other such person or persons as aforesaid, appointed as aforesaid, of or for any such parish or parishes, township or townships, hamlet or hamlets, place or places, or any of them, or any of the goods or materials carried into any such workhouse or workhouses, to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse or workhouses: or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse or workhouses, or shall be aiding or assisting therein: or if any person or persons shall cause such mark or stamp, marks or stamps as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of five pounds, nor less than one pound, upon conviction thereof, either by the confession of such person or persons, or by the oath of one or more credible witness or witnesses, before any one or more of his majesty's justices of the peace of the county, city, town, riding, or division wherein the offence or offences shall be committed; one moiety of which said penalty shall go to the informer or informers, and the other moiety shall go and be paid to the overseers of the poor of the parish or parishes, township or townships, hamlet or hamlets, place or places to which such articles or things may belong, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places; and in case any person or persons who shall be convicted as aforesaid, shall not pay such penalty or penalties upon conviction, then and in such case such justice or justices of the peace shall and may and is and are hereby required to commit such offender or offenders to the common gaol or house of correction, there to remain, without bail or mainprize, for any space of time not exceeding two calendar months: and if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them, any clothes, linen, or other goods or things as aforesaid, such person or persons being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain, without bail or mainprize, for the space of three calendar months; and in all cases such mark, stamp, or brand, on any such articles or things as aforesaid (being duly authenticated) shall be considered and taken to be sufficient evidence, without further proof, of the right of property in such overseers or other person or persons appointed as aforesaid, as the case may be: provided always, that such mark or stamp as aforesaid shall not at any time be placed on any articles of wearing apparel so as to be publicly visible on the exterior of the same."

Penalty on per-
sons buying or
receiving into
pawn any pro-
perty provided
for the poor by
parish officers;

or defacing
marks.

Penalty.

Application of
penalty.

On nonpayment
of penalty, of-
fenders to be
committed.

Persons abscond-
ing with work-
house property
to be committed.

Mark or stamp
on articles to be
evidence of the
right of property.

Mark not to be
put on the out-
side of wearing
apparel.

Persons guilty of
misbehaviour in

Sect. 5. "And whereas persons maintained in public workhouses some-
times refuse to work, or are guilty of drunkenness and other misbehaviour,

*Conduct of
Master and
Inmates.*

workhouse may
be committed.

Penalty on per-
sons introducing
spirituous liquors
into workhouses.
(a)

Penalty on
masters of work-
houses allowing
use of spirituous
liquors, or ill-
treating poor
persons, or mis-
conducting him-
self.

Power for justices
to order salaries,
&c. to be stopped,
and applied to-
wards payment
of penalties.

Form of convic-
tion.

Conviction not to
be set aside for
want of form.

and by the laws in being no sufficient punishment is provided for such offences; it is therefore enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor, shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain, without bail or mainprize, for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour."

4 & 5 Will. IV. c. 76, s. 92, enacts "that if any person shall bring or attempt to bring into any workhouse any spirituous or fermented liquor, without the order in writing of the master, it shall be lawful for the master or any officer of the same, acting under his direction, to apprehend such offender, and to carry him before a justice, who is empowered to determine such offence in a summary way; and upon conviction the party offending shall forfeit not exceeding ten pounds; and in default of payment, such justice is required to commit such offender to the common gaol for not exceeding two calendar months, unless such penalty shall be sooner paid."

Sect. 93 enacts "that if any master of a workhouse shall order any spirituous or fermented liquor to be brought into any workhouse, except for the domestic use of himself or of any officer of the workhouse, or their families, or except under the written authority of the surgeon, or of any justice visiting the same, or of the guardians, or in conformity with any orders of the commissioners; or if any master or other officer of any workhouse shall bring into such workhouse, or knowingly permit to be brought or sold, used, lent, or given away therein, any spirituous or fermented liquor, contrary to the orders of the commissioners; or shall punish with any corporal punishment any adult person in such workhouse, or confine any such person for misbehaviour longer than twenty-four hours, or such further time as may be necessary to have such person carried before a justice; or shall in any way abuse or ill-treat, or misconduct himself towards or with respect to any poor person in such workhouse; every master or officer of a workhouse shall for every such offence, upon the complaint of the overseers or guardians of the parish or union, or of any such poor person, and upon conviction before any two justices, forfeit not more than twenty pounds, as such justices may direct; and in default of payment such justices are required to commit such offender to the common gaol for not exceeding six calendar months, unless such penalty shall be sooner paid: provided that if at the time when any master or officer shall be so convicted there shall be due to him any money in respect of his employment, or upon any balance of account from the overseers or guardians, it shall be lawful for such justices, upon the application of such overseers or guardians, to direct that such money or balance shall be retained in payment of such penalty; and such order shall be a good discharge for so much money against the claim of the master or officer."

A copy of these clauses are to be hung up by the master in some public place. Sect. 94.

The statute then gives the following form of conviction:—

*Be it remembered that on the day of in the year of our Lord
A. B. is duly convicted before of his Majesty's justices of the peace for the
county of [or "city" or "liberty of " as the case may be,] of having [here
state the offence] contrary to the statute in that case made and provided. Given
under my hand and seal [or, "our hands and seals," as the case may be,] the day
and year first above written.*

And such conviction shall not be quashed for want of any other form of words, nor be removed by *certiorari*, or any other writ.

(a) Sect. 91 of this statute repeals so much of 6 Geo. IV. c. 80, as relates to the prohibition of spirituous liquor in workhouses.

Sect. 9. If any person shall think himself aggrieved by the judgment, such person may appeal to the next quarter sessions of the peace; such person at the time of his conviction entering into a recognizance, with two sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions; and the said justices at such sessions shall determine the causes and matters of such appeal in a summary way, and make such order therein as the said justices shall think proper; and the determination shall be final.

*Appeal—
Penalties.*

Appeal to the quarter sessions.
Recognizances to be entered into.
Decisions to be final.

APPEAL UNDER 22 GEO. III. c. 83.—LEVYING PENALTIES.

By 22 Geo. III. c. 83, s. 46, "any person aggrieved by the act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general quarter sessions of the peace for the county, riding, liberty, division, precinct, or district, wherein such act was done, giving eight days' notice thereof to the party against whom the complaint shall be made, and giving security, by recognizance, to be acknowledged before a justice of the peace, with a sufficient surety, to pay the costs attending such appeal, if the matter shall be determined against the appellant; and the justices at such quarter sessions are hereby authorised to hear and determine such appeal, and to award costs, for or against the appellant, as they shall see just cause so to do; which determination shall be final, and shall not be removed by *certiorari*."

Appeal to quarter sessions.

Sect. 45. "That all penalties inflicted by this act shall be recovered before one or more justice or justices of the peace of the jurisdiction where the offender dwells; who shall, upon conviction, in default of payment, after due summons, and demand made, cause the same to be levied by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of any justice of the peace having jurisdiction where such offender shall dwell, rendering to the said offender the overplus, if any, after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then, and in every such case, it shall and may be lawful to and for any such justice of the peace to commit such offender to the house of correction, there to remain, without bail or mainprize, for any space not exceeding six calendar months, nor less than one calendar month; and that every such penalty and forfeiture, if not hereby otherwise directed to be disposed of, shall be paid to the treasurer of every such house or houses, where any such shall be established under the authority of this act, to be applied by him towards defraying the monthly expenses of victuals, beer, firing, and other necessary provisions for the poor within such house or houses."

Penalties.

11. Relief of the Poor out of the Workhouse.

The authority of the commissioners in regulating the relief of the poor is now so general, that the present state of the law deserves consideration before entering on the former law on this subject. The power of the *commissioners* is general, but they are by the 15th section of 4 & 5 Will. IV. c. 76, prevented from interfering in any *individual* case for the purpose of giving relief. Subject to their control, the 54th section of that statute (a) enacts, that the ordering, giving, and directing of all relief to the poor of any parish which, according to the provisions of any of the said recited acts, (b) or of the 1 & 2 Will. IV. "for the better regulating of Vestries," or of this

Commissioners cannot order relief in an individual case.

No relief to be in future given, except by guardians, &

(a) The substance only of the statute is here given; the whole will be found in the Appendix.

(b) The 36 Geo. III. c. 23; 55 Geo. III. c. 137, s. 3 and 4; and 59

Geo. III. c. 12, s. 2 and 5, are recited in the preceding section: and the provisions which gave to the justices power to order relief out of the workhouses repealed. See *ante*, "Justices," Vol. II.

*Relief of Poor
out of Work-
house.*

or select vestry,
except articles of
necessity in cases
of sudden neces-
sity.

When upon neg-
lect of overseer a
justice may order
some relief to
persons not settled
nor usually re-
siding.

Any justice may
give order for
medical relief in
dangerous illness.

Justices may or-
der out-door relief
to aged and infirm
persons wholly
unable to work.

Commissioners to
regulate the relief
to able-bodied
paupers and their
families out of the
workhouse.

act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not, (but subject in all cases to the powers of the commissioners,) shall belong exclusively to such guardians of the poor or select vestry, according to the respective provisions of the acts under which they are appointed; and no overseer shall give any relief or allowance than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief in articles of absolute necessity, but not in money, and whether the applicant be settled in the parish, or not: provided, that in case such overseer shall neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, any justice may order the overseer to give such temporary relief in articles of absolute necessity, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds; provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice to order relief to any person from the poor rates except as herein-before provided.

Sect. 27. "That in any union which may be formed under this act it shall be lawful for any two of his Majesty's justices of the peace usually acting for the district wherein such union may be situated, at their just and proper discretion, to direct by order under their hands and seals, that relief shall be given to any adult person who shall from old age or infirmity of body be wholly unable to work, without requiring that such person shall reside in any workhouse: provided always, that one of such justices shall certify in such order of his own knowledge, that such person is wholly unable to work, as aforesaid; and provided further, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of a workhouse."

Sect. 52 recites, that a practice had obtained of giving relief to persons or their families who, at the time, were in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects: and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid; and enacts, that it shall be lawful for the commissioners to order (a) to what extent and for what period the relief to be given

(a) *The following orders have been issued by the commissioners to most of the unions.*

By the 21st rule (see Appendix,) no relief shall be given in money (except in sickness or accident) to any able-bodied male pauper who is in employment, (the same not being parish work,) and in the receipt of earnings; nor to any part of his family who shall be dependent on him, or for whose relief and maintenance he shall be liable.

If any able-bodied male pauper shall apply to be set to work by the parish, one-half at least of the relief which may be afforded to him or to his family shall be in kind.

One-half at least of the relief which may be afforded to widows or single women, not being aged or infirm, shall be in kind.

No relief shall be given to any able-bodied male pauper by payment on account of the rent for house or lodging for any part of his family who shall be dependent upon him, and for whose relief and maintenance he shall be liable, or by allowance towards such rent.

Except in case of accident, sickness, or other urgent necessity, no relief shall be afforded from the poor-rates to any pauper between the ages of sixteen and sixty, belonging to any parish or place comprised in the union, who shall not be resident therein: provided always, that this regulation shall not extend to any person not being an able-bodied male pauper between the ages of sixteen and sixty, who shall, on the day herein appointed for the first meeting of the guardians, be in the receipt of relief from any parish or place comprised in the said

to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse, by payments in money, or with food or clothing in kind, and all relief given contrary to such orders is unlawful, and shall be disallowed in the accounts; provided, that in case the overseers or guardians, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application of such orders at the time or in the manner prescribed by the commissioners, would be inexpedient, it shall be lawful for such overseers or guardians to delay the operation of such orders for thirty days, to be reckoned from the day of the receipt of such orders; and such overseers or guardians shall, twenty days at the least before the expiration of such thirty days, make report of such special circumstances to the commissioners; and all relief which shall be given by such overseers or guardians, before an answer to such report shall have been returned by the commissioners, shall not be deemed unlawful although given contrary to such orders; but notwithstanding the special circumstances, it shall be lawful for the commissioners, by a peremptory order, to direct that from a day to be fixed thereby, such orders as they think expedient shall be enforced, and if any relief be given by such overseers or guardians after the said last-mentioned period, contrary to such last-mentioned order, the amount shall be disallowed in the accounts: provided also, that in case the overseers or guardians shall depart from the order in a particular instance of emergency, and shall within fifteen days after every departure report the same and the grounds thereof to the commissioners, and the commissioners shall approve of such departure, or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid, then the relief granted by such overseers or guardians shall not be disallowed.

Relief by Loan.

Relief contrary to their regulations to be disallowed:

but overseers may delay the operation of such regulations under special circumstances and make report thereof to commissioners.

If commissioners disapprove of delay, they may fix a day from which all such relief shall be disallowed.

Cases of emergency.

RELIEF BY LOAN.

RELIEF BY LOAN.

By 4 & 5 Will. IV. c. 76, s. 58, it is enacted, that any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the commissioners shall direct, (a) to be considered as given by way of loan, and whether any receipt or engagement to repay the same shall have been given or not, is hereby declared to be a loan to such poor person.

Such relief as commissioners may direct to be considered as loan.

Sect. 59 enacts, that where any relief shall be given by way of loan, it shall be lawful for any justice, upon the application of the overseers or guardians providing such relief, and upon proof of the same having been given and still remaining due, to issue a summons, requiring such person, as well as his master or employer, to appear before any two justices, to show cause why any wages due, or which may become due, should not be paid over to such overseers or guardians, and if no sufficient cause be shown, or if such person, or some one on his behalf, shall not appear, then the justices shall direct the master or employer to pay, either in one sum or by instalments, as the justices shall think fit, taking into consideration the circumstances of such poor person and his family, out of such wages, to such overseers or guardians, the amount of such relief, and the receipt of any such overseer or

Power to justices to attach wages in hands of master or employer.

union, although not resident in such parish or place, and although such person shall continue a non-resident; but in every such case due inquiry shall be made as to the propriety of such relief being continued.

Rule 22 enables guardians to contract for medical relief to the sick in or out of the workhouse.

(a) Rule 26. Any relief, or the cost price thereof, which the board of guar-

dians shall, after due consideration of the circumstances of the case, think fit to give *by way of loan*, to or on account of any able-bodied male pauper, between the ages of twenty-one and sixty; or to or on account of his wife, or any part of his family under the age of sixteen, shall be considered as a loan to such pauper, and shall be recoverable as such under the Poor Law Amendment Act.

*Duty to
procure
Employment.*

Mode of proceeding against masters for recovery thereof.

guardian shall be a good discharge to such master or employer for so much as shall be so paid; and upon neglect to pay the money the same may be recovered in the same way as penalties, &c. under the act. See a similar provision in 59 Geo. III. c. 12, s. 29, *post*.

RELIEF OF THE POOR NOT IN WORKHOUSE, AND BEFORE 4 & 5 WILL. IV. c. 76.

The intention of the legislature in passing the 43 Eliz. was *to provide work for the able-bodied poor out of employment, and money for the sick and impotent*; (a) and for a long period this humane and just policy was the guide in the administration of relief. In modern times a different system prevailed, and constant relief was given to the able-bodied poor, though in full employment, whenever the number of children rendered the wages of the parents insufficient for their maintenance, a practice clearly sanctioned by the 22 Geo. III. c. 83, s. 32. This system became so general and was considered so pernicious, that the immediate object of the 4 & 5 Will. IV. c. 76, was to put an end to such practice, either at once or by degrees; and in a former section the regulations of the commissioners for this purpose has been considered. (b) The administration of the relief of the poor was originally entrusted to the *overseers*, and even now, where there are no guardians, select vestry, or local act, *the duty still belongs to such overseers*.

DUTY OF PARISH OFFICERS TO PROCURE EMPLOYMENT.

The enactment of 43 Eliz. c. 2, s. 1, as to mode of relief, &c.

43 Eliz. c. 2, s. 1, provides that the overseers shall take order for setting to work the children of all such whose parents shall not be thought able to maintain their children, and all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work.

Under the statute of Eliz. overseers must endeavour to find work for able-bodied poor who are out of employment.

Rex v. Collett, 3 D. & R. 582; 2 B. & C. 324. This was an appeal against the allowance of the accounts of the overseers. Case: The appellant is the proprietor of an estate in the parish of K., a part of which is in his own occupation. In consequence of the depression in the price of agricultural produce, the farmers have been rendered unable to make any improve-

(a) In *Strype's Annals of Church and State*, under Queen Eliz., b. 2, p. 90, there is a letter, which was addressed to Lord Treasurer *Burghley*, by a justice of peace for the county of *Somerset*, which shows that the great evils arising from habits of idleness amongst the poor began then to be understood, and strengthens the idea that one great object of the legislative provisions for the poor made about that time, was to prevent able-bodied men from being unemployed. After observing upon the great increase of crime, and the number of wandering, idle vagabonds then committing depredations in that part of the country, the writer proceeds, "and when these lewd people are committed to the gaol, the poor country that is robbed by them are forced to feed them, which they grieve at. And this year there hath been disbursed to the relief of the prisoners in the gaol 73*l.*, and yet they allowed but 6*d.* a man weekly. And if they were not delivered at every quarter sessions, so much more would not serve, nor two

such gaols would hold them. But if this money might be employed to build some houses adjoining to the gaol for them to work in, and every prisoner, committed for any cause and not able to relieve himself, compelled to work, as many of them as are delivered upon their trials, either by the acquittal of the grand jury, or petty jury, burning in the hand or whipping, presently transferred thence to the houses of correction to be kept in work, except some present will take any into service; I dare presume to say the tenth felony will not be committed that now is." This letter also shows that at that time prisoners committed for trial, although they could not be compelled, and were not willing to work, were in point of fact in some places supported at the expense of the public. It seems, however, that they could not legally claim to be so maintained. See the case of *The Justices of the North Riding of Yorkshire*, 2 B. & C. 286; S. C., 3 D. & R. 510. Vol. II. tit. "Gaols," &c.

(b) *Ante*, p. 62, note.

ments on their lands, and consequently have employed few labourers, by which means a considerable part of the labouring population has been totally unemployed; and during this period, all poor persons belonging to the parish, who had been unable to obtain employment, have received sums of money for their maintenance from the parish officers in proportion to the number of their respective families, for which no labour has been required from them. The respondents admitted that the persons to whom the sums objected to in the account were paid, were in fact both able and willing to work, but that no employment could be obtained for them. No evidence was adduced to prove that the overseers could have employed the labourers. None of the sums objected to were paid under any order from a magistrate. The parishioners met once a week, at which meetings all applications for relief were received, and where all labourers belonging to the parish, who had not in the preceding week been in constant employment, attended to give an account of their earnings, and received such sums as, with the earnings, should amount to a sum deemed competent to their maintenance in proportion to the number of their children. In several cases able-bodied men with four or five children, having had no employment in the preceding week, received from 7s. to 8s. 6d. for the week; having been employed three days, 3s. 6d. to 4s. *per week*; two days, 5s. *per week*; and so in proportion to the number of their children and the amount of their week's earnings. This relief was afforded to these persons, solely on the ground of their having been out of employment, without inquiry as to any means they might have for the supply of their immediate wants by sale or pledge of their household effects; and that in many instances the weekly relief was afforded to various able-bodied labourers for many weeks in succession." *Abbott, C. J.* "It does not appear upon the case before us, that the overseers of the poor considered themselves bound to provide work for the unemployed poor, if that were practicable, nor whether they in any way endeavoured to attain that object. Before we determine whether the overseers were or were not justified in giving pecuniary relief to the unemployed poor, the case must go down to the sessions again, that we may be informed whether any, and, if any, what endeavours were made to procure employment for them. All that the court can now say is, that undoubtedly it is the primary duty of the overseers to find employment for the poor if possible. And I express that opinion now for the sake of the poor themselves, to whom no greater kindness can be done than by enabling them to earn their own living by labour, instead of suffering them to eat the bread of idleness, by which their habits and morals must soon be corrupted." *Bayley, J.*, suggested, "That it was the bounden duty of the overseers to obtain work for the poor if they could, either in or out of their own parish, and it was only in case of inability to procure work, that they would be justified in giving relief in money. Probably this very discussion would rouse overseers of the poor to a sense of their duty in endeavouring to find work for unemployed poor persons. There were several useful modes of employing poor persons, advantageous to the public, such as levelling hills, and improving roads. Within the last few years a great deal had been done in improving the public highways by this mode of employing poor labourers." The case was sent back to the sessions to be amended.

Parishes not availing themselves of the 22 Geo. III. c. 83, are not *compellable* to erect workhouses, but may maintain and employ their poor at their own homes. *Rex v. Wetherill, Cald.* 432.

To facilitate the employment of the poor, overseers have been authorized under various statutes to take *land*.

The 59 Geo. III. c. 12, (a) authorizes them to use land belonging to the

Duty of Overseers to procure Employment.

Quere. Whether they could legally relieve such persons otherwise than by setting them to work and paying them for their labour?

Overseers to provide *land* for the employment of the poor.

(a) The 59 Geo. III. c. 12, s. 12, after reciting that "whereas by an act passed in the 43d year of the reign of Queen Elizabeth, the churchwardens and overseers of the poor are directed to set to work certain persons therein de-

scribed: and whereas by the laws now in force sufficient powers are not given to the churchwardens and overseers, to enable them to keep such persons fully and constantly employed;" enacts, "that it shall be lawful for the churchwardens

Duty of Overseers to procure Employment.

Power to inclose fifty acres of forest lands for the poor.

Allotments under inclosure acts.

parish, or to purchase or rent land in or near the parish, not exceeding twenty acres. It further permits them to let portions of such land to the poor and industrious at a rent to be fixed by the vestry.

By 1 & 2 Will. IV. c. 59, s. 1, the overseer may inclose from any forest or waste lands belonging to the crown, lying in or near the parish, with the consent of the lord treasurer or the commissioners of the treasury, not exceeding fifty acres, for the purpose of cultivating and improving the same for the use and benefit of such parish, and the poor persons within the same. (a)

By the 2 Will. IV. c. 42, allotments made for the poor in parishes inclosed under an act of parliament, may, with the consent of the trustees of the allotment and the overseers, be let to industrious cottagers. Each portion to be not less than one quarter of an acre, and not exceeding one acre. The statute makes provision about the mode and time of letting, and the recovery of the rent or possession of the land, and prohibits the erection of habitations, and it directs that the rent shall be applied in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the parish. There is a further power for the vestry to exchange such allotments for land more favourably situated. All these powers are now subjected to the rules of the commissioners. See Appendix, 5 & 6 Will. IV. c. 69, s. 4.

To provide Work otherwise.

Overseers to provide Work for the poor.

Setting up trades for benefit of the poor.

To encourage the employment of the poor various statutes have been passed to enable parishes to borrow money from the treasury. See statutes collected in a note to **Poor Rates**.

By 3 Car. I. c. 4, s. 22, the churchwardens and overseers may, by the consent of two justices within their respective limits, wherein shall be more justices than one, and where no more shall be than one, with the assent of

and overseers of the poor of any parish, with the consent of the inhabitants thereof in vestry assembled, to take into their hands any land or ground which shall belong to such parish, or to the churchwardens and overseers of the poor of such parish, or to the poor thereof, or to purchase, or to hire and take on lease for and on account of the parish, any suitable portion or portions of land within or near to such parish, not exceeding *twenty acres* in the whole;* and to employ and set to work in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and to pay to such of the poor persons so employed as shall not be supported by the parish, reasonable wages for their work; and the poor persons so employed shall have such and the like remedies for the recovery of their wages, and shall be subject to such and the like punishment for misbehaviour in their employment, as other labourers in husbandry are by law entitled and subject to."

Sect. 13 enacts, "that for the promotion of industry amongst the poor, it shall

be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants in vestry assembled, to let any portion and portions of such parish land as aforesaid, or of the land to be so purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be by him or her occupied and cultivated on his or her own account, and for his or her own benefit, at such reasonable rent and for such term as shall by the inhabitants in vestry be fixed and determined."

(a) In 1832 a temporary act was passed for the better employment of the agricultural labourers, by which agreements made in vestry by a majority of three-fourths of the rate payers, and approved by the justices at the petty sessions, were to be binding on the parish; and it was enacted, that the overseers should not expend any money raised for the relief of the poor in the employment of any person in any work whatever. The statute continued in force till the 25th day of March, 1834.

* Extended to *fifty acres* by 1 & 2 Will. IV. c. 42, s. 1; and see *id.* c. 59, as to crown lands.

that one justice, set up and use any trade, mystery, or occupation, only for the setting on work and better relief of the poor.

By 43 Eliz. c. 2, s. 5, the churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal, or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor.

By 9 Geo. I. c. 7, s. 4, the overseers, with the consent of vestry,^(a) might contract with any person for the employing the poor in their respective parishes, or in the united parishes, and take the benefit of the work, labour, and service of such poor persons.

22 Geo. III. c. 83, s. 1. So much of stat. 9 Geo. I. "as respects the maintaining or hiring out the labour of the poor by contract, within any parish adopting the provisions of this act, is repealed; and sect. 2 provides, that it shall and may be lawful for the visitor and guardian, or visitors and guardians, appointed as hereafter mentioned, of any parish, township, or place, or parishes, townships, and places, which shall have adopted the provisions and complied with the requisites of this act, and shall have a visitor appointed, from time to time to make agreements with any person or persons for the diet or clothing of such poor persons who shall be sent to the house or houses to be provided under the authority of this act, and for the work and labour of such poor persons, so that no such agreement shall be made for any longer time than twelve months, and so that the same shall be, and every such agreement is hereby declared to be, under the strictest inspection and controul of the visitor, guardian, and governor of such poorhouse, and also of the justices of the peace for the limit where such poorhouse shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract."

By 55 Geo. III. c. 137, s. 7, it is enacted, "that when and so often as any contract or contracts shall be made or entered into for the providing, furnishing, or supplying any articles, materials, or things for the use of the poor in the workhouse or workhouses of or belonging to any parish or parishes, township or townships, hamlet or hamlets, place or places, or for the erecting of any building or buildings, the expense whereof is to be defrayed out of any rate or rates, or other monies applicable to the relief of the poor, the churchwardens and overseers of the poor, or other person or persons having the management, control, or direction of the poor in such parish or parishes, township or townships, hamlet or hamlets, place or places, shall cause notice of their intention to enter into such contract or contracts, and of the time and place, when and where they shall assemble and meet for such purpose, and of the security which will be required for the performance of such contract or contracts, to be affixed in a conspicuous manner on the outer door of the church, or respective churches, to which such parish or parishes, township or townships, hamlet or hamlets, place or places, shall belong, or to be inserted in one or more of the public newspapers most generally circulated in the neighbourhood, seven days at the least previous to such meeting, in order and to the intent that any person or persons willing to undertake the supplying or furnishing the same, may make proposals for that purpose to such churchwardens and overseers, or other person or persons as aforesaid, at the time and place mentioned in such notice."

The 43 Geo. III. c. 54, enacted, that the contractors should reside in the parish, and give security, to the satisfaction of two justices, in a penalty not less than one-half of the amount of the poor rate; but this statute is repealed by 4 & 5 Will. IV. c. 76, s. 50, but the repeal is not to affect any bond or

To provide Work otherwise.

Erecting houses for the poor.

Overseers may contract for the maintenance and employment of the poor.

Farming out the poor to cease, where guardians appointed.

Agreement for diet or clothing of paupers in poorhouse.

Notice of contracts for supplying workhouses to be given.

43 G. 3, c. 54, repealed.

(a) Where a select vestry has been here given may be exercised by them. constituted under 59 Geo. III. the power *Clark v. King, post.*

*To provide
Work other-
wise.*

Contractors for providing for the poor shall be subject to the jurisdiction of the justices as overseers of the poor.

A contract made by a majority of the churchwardens and overseers will bind the rest.

security given before the passing of the act. All contracts made by any parish or union relating to the poor must be made according to the rules of the commissioners. *Ib.* 49. See Appendix.

50 Geo. III. c. 50, s. 2. "Persons contracting for the maintenance of the poor of any parish or place shall, with respect to all such things as they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices of the peace in like manner in all respects as overseers of the poor are subject thereto; and that every order of any such justice to or upon any person so contracting, may be enforced and carried into execution by such means as the same might have been enforced and carried into execution against any overseer of the poor; and that every person so contracting for the maintenance of the poor, who shall refuse or neglect to obey any such order, shall be punishable by the like forfeitures and penalties, to be levied in the same manner as in cases of disobedience or neglect of the orders of justices by overseers of the poor."

Rex v. Beeston, 3 T. R. 592. On an application for a *mandamus* against one of the overseers of *Drayton*, for refusing to pay his proportion of parish money in his hands to the person who had contracted to maintain the poor: the question was, whether it was necessary that *all* the churchwardens and overseers should concur in making the contract, or the *majority* of them would bind the rest? It appeared that three churchwardens and two overseers only agreed to the contract, and one overseer refused to join. Lord *Kenyon*, "The foundation of my opinion is, that the stat. of 43 Eliz. c. 2, has directed that the general acts to be done by the churchwardens and overseers respecting the poor shall be done by a *majority* of them; and I think that the spirit of that statute pervades all the subsequent acts respecting the government of the poor. I consider the statute as engrafted in the 43 Eliz. qualifying the particular act, but referring for the execution of it to the manner pointed out by that statute. Besides, a common understanding what is required to be done by the churchwardens and overseers, is satisfied by being done by a *majority*." The rest of the court concurred—and the rule was made absolute to compel the overseer to pay his proportion to the contractor.

RELIEF OF SICK AND PENSIONERS AND THEIR FAMILIES.

*Relief of the Sick
and Pensioners
and their Families.*

Pensions for service in the navy, army, &c. may be assigned in certain cases for the indemnity of parishes.

The aged and sick were relieved by money payments, and where the applicant was entitled to a pension, the overseers are authorized to require an assignment of it.

By 59 Geo. III. c. 12, s. 30, "when any person entitled to or in receipt of any pension, superannuation, or other allowance, in respect of his service in the navy, royal marines, army, or ordnance, shall apply to any parish for relief, for himself, or for his wife or family, it shall be lawful for the churchwardens and overseers of the poor to require the pensioner or other person applying for relief, before the same shall be granted, to assign to them the next quarterly or other payment or allowance which shall become payable to him, to the intent that they may receive the same, and retain for the use of the parish so much thereof as shall have been by them advanced for the relief of such pensioner or other person, or of his wife or family residing with him in such parish; and it shall also be lawful for the churchwardens and overseers of the poor of any parish, at the request of any person who shall be entitled to or in the receipt of any such pension, superannuation, or other allowance, to advance for his support, or the support of his family, any weekly sum not exceeding the rate of his pension or allowance, to be repaid by and out of the next quarterly or other payment of such pension or allowance, and to take an assignment thereof by way of security for the money so to be advanced, any thing in any act or acts to the contrary notwithstanding; and every assignment to be made of any such pension, superannuation, or allowance, for the purposes of this act, shall be exempt from stamp duty, and shall be in the form or to the effect following; that is to say—

*Form of assign-
ment.*

I [naming the pensioner, or other applicant, and stating such particulars as shall be requisite,] do hereby assign to the churchwardens and overseers of the poor of the parish of _____ the next payment of the pension, at the rate of _____ per diem, [or

as the case may be,] granted to me as and payable from in order to
secure to the said parish of the repayment of the sum of advanced to
me, [or, "of the weekly sum of ordered or agreed to be advanced to me," as
the case may be,] by such churchwardens and overseers,

Signed by the above-named before }
me, one of his Majesty's justices of the }
peace for , this day of }

*Relief of the
Sick and
Pensioners and
their Families.*

And every such assignment, attested by one of his Majesty's justices of the peace, of any quarterly or other payment payable by the commissioners for the affairs of the royal hospitals at *Chelsea* or *Greenwich*, or by the paymaster of the royal marines, or the treasurer of the board of ordnance respectively, and made as aforesaid to the churchwardens and overseers of the poor of any parish, shall be transmitted by such churchwarden or overseer at least one month before such payment shall become due, under cover, addressed to the paymaster-general of his majesty's forces, with the words '*Chelsea pensioner*' written thereon, or to the paymaster of pensions at *Greenwich* hospital, with the words '*Greenwich pensioner*' written thereon, or to the paymaster of the royal marines, with the words '*royal marines pensioner*' written thereon, or to the secretary to the board of ordnance, with the words '*ordnance pensioner*' written thereon; who shall thereupon respectively cause the said payment to be made to the churchwardens or overseers of the poor of the parish for whose security the assignment shall have been made, in the same manner as the said payment would have been made to the person assigning the same if no such assignment had been made; and such churchwardens and overseers, or any one or more of them, are and is hereby authorized to receive the same, and to retain thereout for the use of the parish so much as shall have been advanced and paid on security thereof, and forthwith to pay the residue (if any there shall be) to the pensioner or person by whom such assignment shall have been made; and if any question shall arise between the pensioner or person making any such assignment, and the churchwardens and overseers of the poor of any parish, touching the amount which shall be due and payable to them by virtue of any such assignment, the same shall be determined in a summary way by one of his Majesty's justices of the peace, and his order and determination therein shall be final and conclusive: provided that no such assignment shall entitle the churchwardens and overseers, to whom the same shall be made, to receive the pension or allowance purporting to be thereby assigned, if the party assigning the same shall die before the time when such pension or other allowance would have become payable to him if no such assignment thereof had been made."

Such assignment, attested by justice, to be transmitted by churchwarden, &c. to paymaster-general, &c.

The pension assigned to be paid to churchwardens, &c.

Assignments of persons to become void by the death of the pensioner before the day of payment.

RELIEF TO PRISONERS CONFINED UNDER MESNE PROCESS FOR DEBT, IN GAOLS WHICH ARE NOT COUNTY GAOLS.

52 Geo. III. c. 160. After reciting that "great distress is suffered by poor persons confined under mesne process for debt in such gaols as are not county gaols, in consequence of their not receiving any allowance whereon to subsist during the time of such confinement," it is enacted, s. 1, "that it shall be lawful for any one justice of the peace acting for the county, riding, or division, wherein any gaol which is not a county gaol is situated, to order the overseers of the poor of the parish, township, or place wherein any such gaol (which is not a county gaol) shall be situated, to relieve any poor person who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseers as aforesaid."

Relief to Prisoners for Debt.

Justices to order parochial relief to debtors in such gaols as are not county gaols.

Sect. 2. "That the sum to be given for the relief of any such poor person shall not exceed 6d. per diem, during the time of his or her confinement in such gaol, under mesne process for debt."

Limiting the sum.

Sect. 3. "The overseers of the poor of any such parish, township, or place, to whom any such application for relief shall be made as aforesaid, if they shall doubt whether such poor person is legally settled in such parish, town-

Legal settlement of debtor to be ascertained.

*Relief to
Prisoners for
Debt.*

Order of removal
to be suspended
while debtor is
imprisoned,

and to be served
on the overseers
of the poor of his
parish,

who shall repay
the expense at-
tending the pau-
per.

Amount advanced
to be levied by
distress, if not
paid or appealed
against.

On appeal ses-
sions may reduce
the amount.

Appeal against
the order of re-
moval.

ship, or place, shall cause him or her to be examined upon oath before one or more justice or justices of the peace, touching his or her last legal settlement, upon which examination it shall be lawful for justices to make an order for the removal of such poor person to the place of his last legal settlement, and to suspend the execution of such order of removal during the time of such person being confined in such gaol under such mesne process, which suspension of the same shall be indorsed on the said order, and signed by such justices, and the subsequent permission to execute the same shall be indorsed on the said order, and signed by such justices, or by any other two justices of the peace acting for the same county, riding, or division."

Sect. 4. "That a copy of the order of removal, and of the order for suspending the execution of the same as aforesaid, shall, as soon as may be after the making thereof respectively, be served upon the overseers of the poor of the parish, township, or place in which such poor person shall by such order of removal, be adjudged to be legally settled."

Sect. 5. "That although such poor person shall not have been actually removed in pursuance of such order of removal as aforesaid, it shall be lawful for any justice of the peace to direct the overseers of the poor of the parish, township, or place in which such pauper is adjudged to be settled, to repay to the overseers of the poor of the parish, township, or place wherein such gaol shall be situated, all the charges proved upon oath of any such overseers of the parish, township, or place where the gaol is situated, to have been incurred in granting relief to such pauper during the time of his confinement and the suspension of such order, not exceeding 6d. *per diem*; and if the overseers of the parish, township, or place to which such order of removal shall be made, or any or either of them, shall refuse or neglect to pay any such sum so advanced as aforesaid within twenty-one days after demand thereof, and shall not within the same time give notice of appeal as hereinafter mentioned, it shall be lawful for one justice of the peace, by warrant under his hand and seal, to cause the money so directed to be paid as aforesaid, to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting to pay the same, and also such costs attending the same, not exceeding 40s., as such justice shall direct; and if the parish, township, or place to which the removal was ordered to be made, be without the jurisdiction of the justice of peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township, or place as aforesaid, who upon receipt thereof is hereby authorized and required to indorse the same for execution: provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of 5l., the party or parties aggrieved by such order may appeal to the next general quarter sessions for the county, riding, or division in which such gaol is situated, against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which, in the judgment of the said court, ought to be paid, and in every such case the said court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them, or by such other justice or justices as the said court shall direct."

Sect. 6. "That it shall be lawful for the overseers of the poor of the parish, township, or place wherein such poor person shall, by such order of removal, be adjudged to be legally settled, to appeal against such order to the next general quarter sessions of the peace for the county, riding, or division in which such gaol is situated, holden after the service of the copy of such order of removal, in case such copy shall have been served upon such overseers twenty-one days before the holding of such quarter sessions, but in case the same shall not be served twenty-one days before the holding of such next general quarter sessions, then the appeal may be to the next succeeding general quarter sessions holden for the said county, riding, or division, and

upon such appeal the like proceedings may be had as are observed in other cases of appeals against orders of removal of poor persons by any law now in being: provided always, that in case such order of removal and suspension is not appealed against in manner aforesaid, or if upon appeal such order shall be confirmed, such poor person shall be deemed and taken to be legally settled in the parish, township, or place in which he shall by such order of removal be adjudged to be legally settled."

Relief to Prisoners for Debt.

Sect. 7. "That in case any poor person applying for relief under the provisions of this act shall, upon his examination as to his last legal settlement, be found not to be legally settled in any parish, township, or place within *England and Wales*, it shall be lawful for any one justice of the peace to order the overseers of the poor of the parish, township, or place wherein the gaol is situated, (in which such poor person shall be confined under mesne process for debt,) to relieve such poor persons with a sum not exceeding 6d. *per diem* out of the funds in their hands applicable to the relief of the poor, which sum shall be reimbursed to the overseers of the poor of the said parish, township, or place, for the use of such funds, out of the county rate, by the treasurer of the county, riding, or division in which such parish, township, or place shall be situated, at the expiration of the confinement of such poor person upon such mesne process as aforesaid."

If pauper has no settlement in *England or Wales*, the allowance is to be paid out of county rate.

MEDICAL RELIEF.

Medical assistance is within the meaning of *relief*, as understood and used in the poor laws, and an overseer is bound to supply such *relief* to a pauper labouring under a dangerous illness, though out of the workhouse, and not having previously had relief. *Per Holroyd, J., Rex v. Warren, Worcester Lent Ass. 1820.* See *Casual Poor*, post, 88 to 96; and see 4 & 5 Will. IV. c. 76, s. 54.

Relief by Medical assistance.

A stranger, and, *a fortiori*, a deputy overseer, directing a surgeon to attend a pauper, is liable, in respect of his *retainer*, to pay the surgeon's bill. But a deputy overseer is not liable unless he has expressly retained the surgeon. *Watling v. Walters*, 1 Car. & P. 132.

RELIEF BY LOAN. (b)

59 Geo. III. c. 12, s. 29, after reciting, that it is expedient to discourage that reliance upon the poor's rates which frequently induces artisans, labourers, and others, to squander away earnings which would, with suitable care, have afforded sufficient means for the support of their families, enacts, "that whenever it shall appear to the justices, or to the general or select vestry, or to such guardians, governors, or directors as aforesaid, or to the overseers of the poor, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect, or wilful misconduct, have been able to maintain himself, or to support his family (as the case may be), it shall be lawful for the overseers of the poor (by the direction of the justices, or of the general or select vestry, or of such guardians, governors or directors, where application shall have been made to them respectively,) to advance money weekly, or otherwise, as may be requisite, to the person so applying, by way of loan only, and to take his receipt for, and engagement to repay every sum

Relief by Loan.

Overseers empowered, in certain cases, by direction of justices, &c., to give relief by way of loan only. (a)

(a) It is stated in the Report, p. 333. "From nearly every district complaints were received that large classes of persons who obtained, during particular seasons, such wages as would enable them to maintain themselves and families until the return of their season of work, and provide by insurance against sickness and other casualties, spend the whole of their earnings as fast as they receive them, and when out of work throw themselves and their families on

the parish, and remain chargeable until the period of high wages returns. The alternation of dissipation and privation, to which such persons have become habituated, render it probable, that, even under an improved system of administration, many of them would endure the most rigid workhouse discipline during the winter, to gain freedom from self-restraint in spring, summer and autumn."

(b) See also ante, p. 64.

*Relief by
Loan.*

to be so advanced (for which no stamp duty shall be required); and it shall be lawful for any two justices, upon the application (within one year after any such loan or loans) of one or more of the overseers of the poor for the time being of the parish, to summon the person to whom any money shall have been so advanced; and if upon examination by such justices into his circumstances, it shall appear to them that such person is able, by weekly instalments or otherwise, to repay the whole or any part of the money so advanced to him, and for which he shall have given any such receipt and engagement, it shall be lawful for such justices to make an order under their hands and seals for the repayment of the whole or of any part of such money, at such time and times, and in such proportions and manner as they shall see fit; and upon every default of payment, by their warrant to commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid."

Similar provisions under the Poor Law Amendment Act have been already noticed, p. 64. See 4 & 5 Will. IV. c. 76, s. 58.

ORDER OF JUSTICES.

*Order in these
Cases.*

The order must express that the person is *impotent* as well as poor.

On an order for relief weekly, the money is due the beginning of the week.

Sessions have no power to order surgeon's bills to be paid;

nor the justices.

Rex v. Highworth, 1 Str. 10; 1 Bott, 460. An order to pay 3s. weekly to a poor person was quashed, because it did not appear that the person relieved was poor and impotent. *Parker*, C. J., "I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed." (*Rex v. Stoke Ursey*, 1 Str. 10; S. P. *Rex v. Tipper*, 1 Bott, 460.)

Rex v. Fearnley, 1 T. R. 316. This was a demurrer to an indictment against the overseer of *Checkheaton*, for disobeying an order of two justices, for the payment of 1s. 6d. a week to *Sarah Firth*, for the maintenance of herself and her bastard child. It was objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the Court were of opinion that the sum which was ordered to be paid weekly was due at the beginning of the week. Judgment was given for the defendant on another point.

Rex v. Colbitch, 1 Barnard. 46. An order of sessions was made upon the overseers of this parish, that they should pay a surgeon his bill for curing certain poor under their care. The Court said that the sessions have no power to make such orders, and so quashed it.

Rex v. Woodsterton, 2 Barnard. 207, 247; 1 Bott, 464. An order by two justices for paying 5l. upon account of a poor inhabitant when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account, was confirmed at the sessions. It was moved to quash these orders. It was urged that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief. They employed a surgeon and a nurse to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this manner. And the Court were of opinion that these orders should be quashed. See *Casual Poor*, post, 88 to 100.

WHERE TO BE RELIEVED.

*Where to be Re-
lieved.*

Poor to be maintained in the parish where they are;

By the several statutes, the poor were to resort or be sent to their own parishes to be relieved; and in *Clypton v. Ravistock*, Sett. & Rem. 49; 2 Nol. P. L. 369; an order recited that J. S. was last settled in *Clypton*; then ordering the overseers of *Clypton* to repair to the parish of *Ravistock*, and to relieve him, being so sick that he cannot be removed. By the Court: "The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them." In *Darlington v. Hemlington*, (Doug. 9, n. 2, Cald. 6,)

where two bastard children, settled at *Darlington*, resided with their mother as nurse-children in the parish of *Hemlington*, where the mother was settled, it was determined that the parish where the children's settlement was, should maintain those children in that other parish.

Where to be relieved.

excepting in the case of bastards, being nurse children.

As a parish is not bound to maintain the poor, who are settled, but not resident therein, relief given to a pauper inhabiting another parish affords evidence that the pauper is settled in the relieving parish. *Rex v. Wakefield*, *post*.

Casual poor, and persons who have no settlement, are entitled to relief in the parish in which they happen to be when the necessity for it arrives. See *Casual Poor*, *post*, 88 to 100.

Casual poor, post.

12. Of the Regulations of Parish Vestries under stats.

58 Geo. III. c. 69, and 59 Geo. III. c. 85. (a)

[See *ante*, Vol. I. tit. *Churchwardens*.]

The 58 Geo. III. c. 69, intituled *An act for the regulation of parish vestries*, enacts, s. 1, that "no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some *Sunday* during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel."

12. *Regulation of Parish Vestries.*

Three days' notice to be given of vestries; by publication in the church and affixing on the church door.

Sect. 2. "And for the more orderly conduct of vestries, be it further enacted, that in case the rector or vicar, or perpetual curate, shall not be present, the persons so assembled in pursuance of such notice, shall forthwith nominate and appoint by plurality of votes, to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be the chairman of and preside in every such vestry; and in all cases of equality of votes upon any question arising therein, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book, (to be provided for that purpose by the churchwardens and overseers of the poor,) and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same."

Chairman of vestries appointed.

Chairman to have the casting vote.

Minutes to be entered and signed.

Sect. 3. "In all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to 50*l.* or upwards, (whether in one or more than one sum or charge,) shall have and be entitled to give one vote for every 25*l.* of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so, nevertheless, that no inhabitant shall be entitled to give more than six votes: and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge." (b)

Manner of voting in vestries. (a)

(a) Where guardians are elected under 4 & 5 Will. IV. c. 76, the right of voting is regulated by that statute, as regards the occupier, but the number of votes which the owner may give is to be governed by this law.

(b) Where a right of nominating a perpetual curate was given to the parishioners, the bye-law or resolution of a parish vestry cannot exclude those who have not paid their church rates. *Faulkner v. Elgar*, 4 B. & C. 449; 6 D.

12. *Regulations of Parish Vestries.*

Persons rated to the poor, though not resident, may vote in vestry.

Clerk or agent of corporations, &c., may vote in vestry according to the value of the premises rated.

Inhabitants coming into parish since the last rate may vote.

Inhabitants refusing to pay poor rates, to be excluded from vestries.

* *Sic.*

Mistake rectified.

59 Geo. III. c. 85, reciting 58 Geo. III. c. 69, which gives a power in certain cases to rate payers, enacts, s. 1, "that any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value, arising from any lands, tenements, or hereditaments, situate in any parish, in which any vestry shall be holden under the said recited act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry; and such person shall have, and be entitled to give, such and so many vote or votes at such vestry, in respect of the amount of such rent, profit, or value, as, by the said act, any inhabitant of such parish present at such vestry might or ought to have and be entitled to give, in respect of such amount, and to all intents and purposes, as if such person were an inhabitant of such parish; any thing in the said recited act to the contrary in any wise notwithstanding."

Sect. 2. "That in all cases, where any corporation or body politic or corporate, or company, shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation, or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward, or other agent, duly authorized for that purpose, of such corporation, or body politic or corporate, or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward, or agent, shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit, or value of such lands, tenements, or hereditaments, as by the said act any inhabitant assessed to such rate, present at such vestry, might or ought to have and be entitled to in respect of such amount; any thing in the said recited act to the contrary in anywise notwithstanding."

58 Geo. III. c. 69, s. 4. "That when any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same."

Sect. 5. "That no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him,* and shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same."

The word "and" was inserted in the above statute by mistake, to rectify which, it was enacted by 59 Geo. III. c. 85, s. 3, "that no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him, shall be entitled

& R. 517. But in *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93, Lord Eldon held, that where the advowson of a parish was vested in trustees for the benefit of the parishioners, the right of voting at the election may by long usage be limited to parishioners who pay church and poor's rates; and an election by such was confirmed. In this case the same eminent judge determined that a vote by ballot on such occasions was illegal, and an election so made void.

Attorney-General v. Wilkinson, 7 Moore, 187; S. C. 3 B. & B. 266. Where, under a deed of feoffment, certain lands were granted to fourteen feoffees, for the maintenance of a schoolmaster to instruct the children of all the inhabitants of a parish, and it was provided that no act concerning the lands

should be done but in a vestry or meeting of the feoffees, and ten at least of the inhabitants of the parish which should be vestrymen and not feoffees, in a vestry to be held by them; and a power of removal of the schoolmaster was given, so that it was with the consent and agreement of the feoffees and vestrymen, or the major part of them which should be assembled in vestry, so always as there should be ten at least of the vestrymen which were not feoffees vote at the holding of the vestry, in which the putting away of any schoolmaster should be agreed upon: Held, that in the execution of the power of removal of the master, the votes were to be taken *per capita*, and not according to the provisions of the 58 Geo. III. c. 59.

to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent, be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor, which shall have been assessed and charged upon, or in respect of, the annual rent, profit, or value, in right of which any such clerk, secretary, steward, or agent, shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied."

Nightingale v. Marshall, 2 B. & C. 313; 3 D. & R. 549. Case for a false return to a *mandamus*. The office of sexton for the parish of *Saint Mary, Whitechapel*, in the county of *Middlesex*, is an ancient office, and the right of election is in the inhabitants paying church and poor's rates, in vestry assembled. The office became vacant, and there were two candidates, the plaintiff and J. W. Several inhabitants of the parish claimed a right to give more than one vote under the 58 Geo. III. c. 69, s. 3: and the only question in the case is, whether, under the circumstances hereinafter stated, a plurality of votes was admissible at the said election. The poor rates are not, and never have been, assessed upon all the inhabitants uniformly, according to an equal pound-rate: but the rate purports to be made, and, according to ancient custom, always has been made, by the discretion of the vestry without respect to value, but according to the ability of the party charged, such ability being estimated with reference to property, whether in the parish or out of it. In some instances the property is stated in respect of which the party is charged; but in a great majority of cases the property is not stated, and where it is stated, the rate is not in proportion to the rent of the property. *Abbott, C. J.* "I give no opinion as to the validity of the rates in question. My opinion is founded entirely on the third section of the 58 Geo. III. c. 69, which provides for a plurality of votes. Looking at this rate, I am clearly of opinion, that no person in this parish 'is rated upon or in respect of any annual rent, profit, or value.' If the rate were so made, it must be proportioned to the amount of the rent, profit, or value, in respect of which it is imposed. It is not so proportioned; and it therefore appears not to have been imposed in respect of the property mentioned in the act, but in respect of some ability to contribute to the relief of the poor, measured by some other standard. I am therefore of opinion that the provisions of 58 Geo. III. c. 69, respecting a plurality of votes, do not apply to the parish in question; the plaintiff, consequently, was not duly elected to the office of sexton, and a nonsuit must be entered." *Bayley, J.* "I am of opinion that this parish is not within the operation of 58 Geo. III. c. 69, s. 3. The general rule is, that there shall be an equal pound-rate upon the property in the parish; therefore all persons having an estate equal in value contribute the same sum. The value of their property is the criterion of the rate. It was the intention of the legislature, by the statute referred to, to increase the power which each inhabitant would have at the vestry meetings, in proportion to the burthen borne by him. This parish cannot have the benefit of that act, for the custom (which may be legal) to make the rate in a particular mode, prevents the property of any individual in the parish being the criterion of the burthen borne by him. We cannot, then, say that the rate is imposed in respect of any annual rent, profit, or value; and unless that be so, the provision for a plurality of votes does not apply." *Holroyd, J.* "The rate stated in this case is not such as to bring the parish within the third section of 58 Geo. III. c. 69. To be within that, the parties must be assessed upon some annual rent, profit, or value: the rate does not show that they have been so assessed. Certain rents are stated, but the inequality of the rate shows that it is not imposed in respect of those rents; nor does it appear to have been imposed in respect of any profit or value, much less annual profit or value. It is left uncertain in respect of what it is assessed, and therefore is quite insufficient to make the 58 Geo. III. c. 69, s. 3, applicable to their vestry meetings." *Best, J.* "If the inhabitants of *Saint Mary, Whitechapel*, are anxious to avail themselves of the provisions in the vestry act, they must

12. *Regulations of Parish Vestries.*

Clerk of companies disqualified from voting if rates not paid.

In the parish of *W.*, the poor rates, according to ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged: Held, that persons so rated were not rated in respect of any annual rent, profit, or value, within the meaning of the 58 Geo. III. c. 69, s. 3, and therefore were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l.*

12. *Regulations of Parish Vestries.*

For preserving parish books and papers.

Penalty on retaining or injuring parish books, &c.

Recovery and application of penalty.

Not to affect other proceedings.

Provisions in relation to parishes extended to townships, &c.

Manner of giving notices of vestries and meetings in special cases.

Not to alter time for holding vestries specially directed; nor to affect special vestries.

alter their mode of rating. By that act it is not sufficient that the parties should be rated at 50*l.* or upwards; to have more than one vote, they must be rated in respect of annual rents, profit, or value. Now it is stated in the case, that each inhabitant is rated according to the discretion of the vestry, and the rate itself shows that the amount of it is not regulated by the amount of the property in the parish. If so, it cannot be made according to the principle laid down in the act; and therefore no person can, by virtue of that act, be entitled to a plurality of votes."

58 Geo. III. c. 69, s. 6. "That as well as the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry-books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall, by the order of such vestry, be directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of one or more credible witness or witnesses, by and before two of his majesty's justices of the peace, upon complaint thereof to them made, shall, for every such offence, forfeit and pay such sum, not exceeding 50*l.* nor less than 40*s.*, as shall by such justices be adjudged and determined; and the same shall be recovered and levied by warrant of such justices in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorized to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed or injured any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may in every such case be proceeded against in any of his majesty's courts, civilly or criminally, in like manner as if this act had not been made."

Sect. 7. "That all provisions, authorities, and directions, in this act contained, in relation to parishes, shall extend, and be construed to extend, to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately, and that all the directions and regulations herein contained, in regard to vestries, shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place, for any of the purposes in this act expressed; and that the notices by this act required to be given of every vestry, may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place, respectively."

Sect. 8. "That nothing in this act contained shall extend, or be construed to extend, to alter the time of holding any vestry, parish, or town meeting which is, by the authority of any act, required to be holden on any certain day, or within any certain time, in such act prescribed and directed; nor shall any thing in this act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township,

or place, by virtue of any special act or acts of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden."

Sect. 9 and 10. "That nothing in this act contained shall extend to any parish in the city of *London*, or borough of *Southwark*."

Sect. 11. "That this act shall extend only to *England* and *Wales*."

May v. Gwynne, 4 B. & A. 301. A rule had been obtained, calling on the plaintiff in this case to produce and permit the defendant to inspect and take copies of certain papers, belonging to the parish of *Hammersmith*, which were in his possession. It appeared that the defendant had, by the authority of the vestry, made a report, in writing, respecting the conduct of the plaintiff, founded, as was stated, on the inspection of certain documents then in the parish-chest, but now in the possession of the plaintiff. This report having been published, an action was brought by the plaintiff for a libel, which the defendant wished to justify, and these documents were necessary for that purpose; and the defendant contended, that he, being an inhabitant of the parish, was entitled to see and take copies of them. It was doubtful in the affidavits whether the plaintiff or another person was legally the vestry-clerk of the parish. Cause having been shown, *Abbott, C. J.*, said "This is a motion of the first impression; and I am of opinion that the court ought not to order a plaintiff to furnish evidence against himself. If the plaintiff be legally the vestry-clerk, then he has a right to the custody of these documents; and if he be not, then the person really entitled to the office may by *mandamus* obtain possession of them. But the defendant has no such right; and I think that we ought not, in this case, which is for a libel, to grant the defendant's application. If the papers had been wanted for the purpose of advancing any parochial right, the case would have been different."—Rule discharged with costs.

Wilson, D. D. v. M'Math, 3 B. & A. 241. The ecclesiastical court has jurisdiction, *ratione loci*, over the order and proceedings of vestry meetings held in a church, and therefore, where a rector had libelled in that court a parishioner, for preventing him from presiding as chairman at such meeting, a prohibition was refused.

In sound legal principle the rector is the head and præses of the meeting. The vestry act, 59 Geo. III. c. 69, s. 2, provides "that in case the rector, vicar, or perpetual curate, shall not be present, the persons so assembled shall forthwith nominate, by plurality of votes, one of the inhabitants to be chairman," which is nearly tantamount to a declaration, or by necessary implication declares, that if the rector, vicar, or curate, *be present*, he shall preside; and the legislature must evidently have considered that by law and usage he was entitled to preside. (3 *Phill. Ec. Ca.* 87.)

The acts of one vestry are not binding on a succeeding vestry, and may be confirmed or rescinded by such succeeding vestry; but the confirmation of the succeeding vestry is not necessary to make the acts of the preceding one valid. (*Mawley v. Barbet*, 2 *Esp.* 687.) As to power of a vestry see *Rex v. Gwyer*, *post*.

Vestrymen who signed a resolution, ordering the parish surveyor to take steps for defending an indictment for not repairing a road, were held not personally responsible for the payment of the attorney employed by the surveyor. (*Sprot v. Powell*, 3 *Bing.* 478. And see *Lanchester v. Tricker*, 1 *Bing.* 201; 8 *Moore*, 20; and *Lanchester v. Frewer*, 2 *Bing.* 366; 9 *Moore*, 688, S. C. See *Holmes v. Williamson*, 6 *M. & Sel.* 158.)

13. Of the Liability of Relations to maintain each other. (a)

43 *Eliz.* c. 2, s. 7; 7 *Jac.* I. c. 4, s. 8; 5 *Geo.* I. c. 8; 59 *Geo.* III. c. 12, s. 31, 32; 5 *Geo.* IV. c. 83, s. 3; 11 *Geo.* IV. c. 10, s. 2; 4 & 5 *Will.* IV. c. 76, s. 56, 57, 71.

(a) The natural obligation upon such near relatives as parent and child cannot be disputed. See the doctrine, 1 *Bla. Com.* 447. But independently of the express enactment in the 43 *Eliz.* c. 2, and other subsequent statutes, there is

12. Regulations of Parish Vestries.

Not to extend to *London* or *Southwark*.

To *England* and *Wales* only.

The Court will not compel the vestry clerk of a parish to produce and permit copies to be taken of documents from the parish chest in his custody, for any other than parochial purposes.

13. Of the Liability of Relations to maintain each other.

13. *Liability of Relations to maintain each other.*

The statute 43 Eliz. c. 2, compelling the relief of poor persons by their parents or children.

Justices in petty sessions empowered to order relief by parents, &c.

The statute of Eliz. extends only to natural relations. (a)

Stat. 43 Eliz. c. 2, s. 7, enacts, "that the *father and grandfather*, and the *mother and grandmother*, and the *children* of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein." [See also 4 & 5 Will. IV. c. 76, s. 56, 57.]

Sect. 11. "Which penalty shall go and be employed to the use of the poor of the same parish, and towards a stock and habitation for them, and other necessary uses and relief, as before in this act are mentioned and expressed; and shall be levied by the said churchwardens and overseers, or one of them, by warrant from any two such justices of the peace, or mayor, alderman, or head officer of city, town, or place corporate, respectively, within their several limits, by distress and sale thereof as aforesaid; or in defect thereof, it shall be lawful for any two such justices of peace, and the said aldermen and head officers, within their several limits, to commit the offender to the said prison, there to remain without bail or mainprize till the said forfeitures shall be satisfied and paid."

The 59 Geo. III. c. 12, s. 26, after reciting the 40 Eliz., and whereas it is expedient to extend the power by the said act given to justices in their quarter sessions to justices in petty sessions, enacts, "that it shall be lawful for any two or more of his Majesty's justices of the peace, for the county or other jurisdiction in which any such sufficient person shall dwell, and they are hereby empowered, in any petty session, to make such assessment and order for the relief of every poor, old, blind, lame, impotent, or other poor person not able to work, upon and by the father, grandfather, mother, grandmother, or child, (being of sufficient ability) of every such poor person, as may by virtue of the said act be made by the justices in their general quarter sessions; and that every such assessment and order of two or more justices in any petty sessions shall have the like force and effect as if the same were made by the justices in their general quarter sessions; and the disobedience thereof shall be punishable in like manner."

And 4 & 5 Will. IV. c. 76, s. 78, gives the same powers for recovering these sums as are given for the levying of penalties under that act.

Rex v. Munday, 1 Str. 190. Order reciting that *Munday* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt*, C. J. "The cases which have hitherto been,

no legal obligation on a parent to maintain his child, or on a child to relieve his parent; and therefore a third person, who may afford such relief, even from absolute want, cannot *sue* the parent for a reasonable remuneration, unless he expressly or impliedly contracted to pay. See *per Le Blanc, J.*, 4 East, 84; *Sir T. Raym.* 260, margin; *Palmer*, 559; 2 *Stark.* 521. Whereas, as we have seen in the case of *husband and wife*, the former may, in some cases, be sued for necessaries provided for the latter, even in defiance of the husband's injunctions not to supply them. The common law considered moral duties of this nature, like others of imperfect obligation, as better left in their performance to the impulse of nature. However a parent may, under circumstances, be indicted at common law for not supplying an infant child with necessaries. *Russell & R. C. C.*

20, 2 Camp. 650; and very slight circumstances will suffice to justify a jury in finding a contract on the part of the father.

(a) Before this case a different doctrine prevailed. *Reg. v. Clentham*, Fol. 39. By the whole Court: "The husband ought to provide for the daughter-in-law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter-in-law after her mother's death." In this case the wife was dead.

Reg. v. St. Botolph's, Aldgate, Fol. 42. The question was, whether the husband shall be chargeable to maintain his wife's children by a former husband? And it was resolved he was during the wife's life, in her right, but not after.

There was an order upon the mother, who was married to a second husband,

were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion that *the son-in-law is not bound*, either within the words or intent of the statute, which provides only for *natural parents*. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before; and the law of nature doth not reach this case."

Tubb v. Harrison, 4 T. R. 118. This was an action of covenant, in which the defendants, who were father and son, (after reciting that differences had arisen between the son and his wife, and that they had agreed to live separate,) covenanted *inter alia* to pay all the debts contracted by her, *which her husband was by law liable to pay*. One of the breaches assigned was, that they had refused to repay money laid out for board, lodging, and other necessities for her infant son by a former husband. Lord Kenyon, C. J. on the authority of *Rex v. Munday*, 1 Str. 190, *ante*, p. 78, in which an order of maintenance was reversed by the court, *because the stat. of Eliz. extends only to natural relations*, was of opinion that the husband was not liable to pay the expenses of maintaining the wife's child by a former husband, although the wife were then living, and ordered those articles in the account to be disallowed.

One who marries a widow, having children by her former husband, was not bound under the statute of Eliz. to maintain such children, though they were maintained by the widow before her second marriage, when her second husband acquired her former means. Therefore, if the second husband maintain such children, it was holden a good consideration for a promise by them when they come of age to repay the expense of their maintenance respectively: especially where the second husband was a man of small substance, and the children had a competent provision to receive when they came of age, which was to accumulate for them in the meantime, and he made no application to Chancery for an allowance out of the fund, as he might have done. *Cooper v. Martin*, 4 East, 76.

But now by the 4 & 5 Will. IV. c. 76, s. 57, every man who after the passing of the act (14 Aug. 1834,) shall marry a woman having children legitimate or illegitimate, shall maintain them as part of his family; this statute gives the justices no express power to make any order; but the 78th section empowers justices to enforce the payment of orders under 43 Eliz. or that act, as penalties may be

Rex v. Kempson, 2 Str. 955. An order was made upon the father to pay a sum to his son's wife, his son having run away from her. A divorce *a mensâ et thoro* for adultery was afterwards obtained against the wife. Two exceptions were taken: first, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *Rex v. Munday*, and the court were of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 Barnard. 329, 364.

Reg. v. Dunn, 2 Nol. P. L. 263. An order was made that the defendant should maintain his son's widow. An objection was taken that by the death of the son the relation which she bore to the father ceased; and although the order was quashed, because it was not set forth that the father was of sufficient ability, yet the court seemed to allow the exception good.

to maintain her children which she had but they ought to have charged her husband by the former husband. But by the court: "A feme covert cannot be charged,

13. *Liability of Relations to maintain each other.*

Same point.

By that statute a man was not bound to maintain his step-children.

But the Poor Law Amendment Act imposes this liability.

Son's wife, the son having run away, not to be maintained by the son's father.

Nor son's widow.

Fol. 44; 1 Bla. Com. 448, 449.

13. *Liability of Relations to maintain each other.*

Nor daughter-in-law.

An order on a grandfather need not state that the father is unable.

Rex v. Benoire, 1 Bott, 449; 2 Nol. P. L. 263. An order for the maintenance of a daughter-in-law was quashed because there was no relation in blood, nor obligation by nature.

The instances are not numerous in the books in which this question has been discussed. Affection will, in most instances, induce the discharge of this obligation with more efficacy than an act of parliament; and even where that motive is wanting, a sense of shame will supersede the necessity of resorting to the statute, where the party is of sufficient ability to render this assistance to relatives, even more distant in degree than is expressed in the enactment.

In *Rex v. Cornish*, 2 B. & Adol. 498, 166(b). "There is nothing in the statute of Eliz. to show that the obligation of the grandfather is absolute only in the event of the father being unable, and that being so the justices who make the order are not bound to assign on the face of it any reason why they made it on the grandfather:" Lord Tenterden. "The statute gives the justices a discretionary power; if the grandfather be a rich man, and the father a poor man, they may in the exercise of their discretion make an order on the grandfather to maintain his grandchildren:" Littledale, J. Order confirmed.

Though the father be living, yet, if he be unable, the grandfather, being of ability, may be compelled to keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past. *Reg. v. Joyce*, 16 Viner, 423.

OF THE ORDER OF MAINTENANCE.

The order must set forth that the person is poor, &c. and not able to work.

Of every Poor, Old, Blind, Lame, and Impotent Person, or other poor person not able to work.] *St. Andrew's Undershaft v. Mendez de Breta*, 1 Ld. Raym. 669. The defendant, being a Jew, had an only daughter, who was converted from Judaism, and embraced Christianity, whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they, reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month. But because they did not allege that she was poor, or likely to become chargeable, the order was quashed.

Poor.] At Chelsea petty sessions, before Flood and France, the county magistrates, *H. P. Dixon, Esq.* a gentleman of landed property, appeared to a summons issued by the bench, to show cause why he refused to assist in maintenance of his aged mother *Mrs. Dixon*; but it appearing that she had an income of 13*l.* per annum, being the interest of 290*l.* in the 4 per cents. the magistrates regretted that it was not in their power to grant the applicant's request, in consequence of being possessed of such trifling property.

Rex v. Gulley, Fol. 47; 1 Bott, 366; 2 Nol. P. L. 264. The order set out, that *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they made an order upon him to allow her 2*s.* 6*d.* a week till further order. Objected, it did not appear that she was lame, blind, or unable to work; so that, though she was in a destitute condition, it might be because she would not work: and upon this exception the court quashed the order.

And that the person on whom the order is made is of sufficient ability.

Being of sufficient ability.] *Q. v. Halifax, Sett. & Rem.* 52; 1 Bott, 431; 2 Nol. P. L. 264. Order for the father-in-law to pay so much a week to his daughter-in-law was quashed, because it was not said that he was of sufficient ability.

An order to pay indefinitely as to time, is good.

In that Manner, and according to that Rate, as by the Justices of that County where such sufficient Persons dwell, in their sessions, shall be assessed.] *Jenkin's case*, 2 Salk. 534. An order of sessions was made, that the defendant shall pay 2*s.* a week towards the support of his father, till that Court shall

order the contrary. Which was held good because it was *indefinite*, and no set time limited; and if an estate happened to fall to him, they might apply to the justices, otherwise if a time was limited.

By the Justices of that County where such sufficient persons dwell.] Therefore if a child lives in the county of *Middlesex*, and be maintained by the parish there, and the grandfather lives in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make the order. (2 *Bulstr.* 344.)

In their Sessions shall be Assessed.] Vide 59 Geo. III. c 12, s. 20. *Reg. v. Jones*, *Fol.* 41; 1 *Bott*, 425. There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole Court: "They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week."

And it is said, that in the order of sessions it ought to appear that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint. (16. *Vin. Abr.* 424; *Rex v. Tripping*, 1 *Bott*, 430; 2 *Nol. P. L.* 264; *Ld. Raym.* 699.)

And an order may be that the grandfather shall pay so much (a) for the time past, while the grandchild was chargeable, as well as for the time to come, the father being living but *unable* to do it. (*Reg. v. Joice*, 16 *Vin. Abr.* 423.) The inability of the father need not appear in the order. (*Rex v. Cornish*, *ante*, 80.)

On pain of 20s. a month — to be levied by distress.] Mr. *Christian* has supposed (1 *Bla. Com.* 448, note 1,) that the relations mentioned in the 43 *Eliz.* c. 2, can only be compelled to allow each other 20s. a month, or 13l. a year; but he has not distinguished between the power to award a *sufficient maintenance* and the *punishment* for the breach of the order. The amount of maintenance is in the discretion of the magistrates, and they may order much more than 20s. a month. And if the party disobey the order by not paying that sum, though exceeding 20s. a month, he may be indicted. (2 *Burr.* 799.)

Rex v. Robinson, (b) 2 *Burr.* 799. The defendant was indicted for refusing to obey an order of sessions for maintaining his two infant grandchildren. In arrest of judgment it was urged that this is a new offence: and where a statute creates a new offence, and gives a particular penalty, and a specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By Lord *Mansfield*, C. J. "The rule is certain, that where a statute creates a new offence by prohibiting and making unlawful any thing that was lawful before, and appoints a specific remedy against such new offence by a particular sanction and particular method of proceeding, that method must be pursued, and no other; but where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute; because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case a remedy existed before the statute of the 43 *Eliz.*; for disobedience to an order of sessions is an offence indictable at common law. So that there are two remedies: one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made: the other, to distrain for the 20s. penalty after neglect

13. *Liability of Relations to maintain each other.*

The order must be made by the justices of the county where such sufficient person dwells.

Pauper not to be sent to such sufficient person.

It must appear that pauper is chargeable.

Penalty of 20s. a month for disobedience, but the order of maintenance to a larger extent may be enforced by indictment.

Indictment will lie for refusing to obey the order of sessions.

(a) Retrospective order on a parish is bad, *Rex v. Maulden*, 2 *Man. & R.* 146; 8 *B. & C.* 80, *post*.

(b) In this case Lord *Mansfield* placed some reliance on the full statement, that

the defendant did not reside *within* the county, therefore there was no power to levy the penalty. This was not however averred in the indictment.

13. *Liability of Relations to maintain each other.*

of payment for a month. The former method has been taken in the present case; and there is no doubt but that an indictment will lie for disobeying an order of sessions." And the Court were unanimously of opinion that the judgment ought not to be arrested.

An order of maintenance must be positive, not by recommendation; it must observe the words of the statute, and state how long the maintenance is to continue. (*Rex v. Pennoyer*, 1 Bott, 433.) Under the 43 Eliz. c. 2, s. 6, the party against whom the order has been made may appeal against it to the justices at general quarter sessions, who, upon evidence and consideration of the circumstances and ability of the party, may reduce the allowance or discharge the order.

Since disobeying an order of justices is an offence at common law, (*vide Rex v. Balme*, Vol. III. tit. Indictment, s. 2,) the law of the above case also applies to orders made by two or more justices in petty sessions, under stat. 59 Geo. III. c. 12. s. 26, *ante*, 78; 22 Geo. III. c. 83, s. 31.

The order must be served and obedience formally demanded, to complete the offence. (4 Dougl. Rep. 333, 388.)

Of appealing against the order.

No appeal lies from an order of maintenance.

No appeal lies to the quarter sessions against an order for relief; but the overseer must, if he can, obtain a fresh order of removal into the proper parish.

Appeal.

In *Rex v. North Shields*, Dougl. 331 (see *ante*, 54,) Willes, J., on delivering the judgment of the Court, said, "We think it unnecessary to give an opinion on the question which has been argued in this case, because I and my two brothers are satisfied that no appeal lies from an order of maintenance. The 3 W. III. c. 11, s. 11, gives a concurrent jurisdiction, in the making orders for the relief of the poor, in or out of sessions, and doth not authorize an appeal. The 9 Geo. I. c. 7, makes no alteration in this respect. The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense. We have spoken to several gentlemen very conversant in sessions law, and none of them ever heard of such an appeal." And the order of sessions was quashed, because they had no jurisdiction, and the original order affirmed.

Rex v. Justices of Devon, 4 M. & S. 421. On a rule nisi for a mandamus to the justices at sessions to hear an appeal against an order for the relief of a pauper, which appeal the justices had determined at the last sessions, conceiving that they had not any jurisdiction; and the counsel cited a note from *Burn*, vol. iv. p. 117, 21st edit. (a) *Per Curiam*. "If, in every case of an order for relief, an

(a) Note of Dr. Burn, in the 21st edit. of this work. It has been observed by Mr. Douglas, (Dougl. 333), that the words of 3 W. III. c. 11, are, "by authority under the hand of one justice residing within the parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justice in sessions." This, he says, it should seem, must mean by order of the court of quarter sessions, not of justices as individuals, when they happen to meet at the quarter sessions. Therefore he makes a query concerning the case of *Rex v. Winship*, post, 83, this note, where the Court is stated to have held, that the sessions could not make an original order of maintenance. (See 36 Geo. III. c. 23, post.)

Unto which it may be added, with respect to this last case of *North Shields*, that the great fundamental statute of 43 Eliz. c. 2, s. 6, enacts, that "if any person shall find himself aggrieved by any thing done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may ap-

peal to the general quarter sessions, whose order therein shall be final:" which, by the rule that acts *in pari materia* are to be taken together and considered as one entire act, may seem to include this case concerning the order of maintenance. The *Carlisle* case above-mentioned was upon an original order at sessions, in which the jurisdiction was not objected to, but the cause was determined on the real merits. The case of *Rex v. Winship*, post, 83, in note, also was upon an original order of sessions, which order the report says was quashed, because the court was of opinion that the sessions had no power to make such order. This present case of *North Shields* was an appeal against an order of a justice out of sessions, and in this case of appeal likewise the Court was of opinion that the sessions had no jurisdiction. From which two last cases it seems to follow that an order of maintenance by a private justice out of sessions is absolutely conclusive, which imports a power in this respect not usual in other like cases; especially as such

appeal will lie, this will divert the funds of the poor into other channels. This order is not *in perpetuum*, it is to pay *until further order*; and why cannot the overseers go back to the quarter where it was made, and point out that the pauper's residence is in another parish, and obtain a fresh order?" Rule refused.

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14. *Of Persons Deserting, or Absent from their Families, and Smugglers.*

5 Geo. I. c. 8; 59 Geo. III. c. 12, s. 31 & 32; 5 Geo. IV. c. 83, s. 3, and 11 Geo. IV. c. 10, s. 2.

The 5 Geo. I. c. 8, recites that divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child or children; and some mothers run or go away, leaving a child or children, upon the charge of the parish or place where such child or children was or were born, or last legally settled, although such persons have some estates, which should ease the parish of their charge in whole or in part, and then enacts "that it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place where any such wife, or child or children shall be so left, upon application to, and by warrant or order from any two justices of the peace, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two justices of the peace as aforesaid shall order or direct, for or towards the discharge of the parish or place where such wife, child or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices of such quarter sessions to make an order for the churchwardens or overseers for the poor of such parish or place to dispose of such goods and chattels by sale or otherwise, or so much of them for the purpose aforesaid as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands and tenements for the purpose aforesaid."

By s. 2, the churchwardens and overseers aforesaid shall be accountable to the justices at quarter sessions for all such money as they, or any of them, shall receive by virtue of this act.

14. *Of Persons deserting or absenting themselves from their Families.*

Churchwardens, &c., by warrant of two justices, may seize the goods, rents, &c. of husbands and parents absenting themselves.

And by order of quarter sessions dispose thereof.

Churchwardens accountable for the monies so received.

justice is required by the statute to be an inhabitant of the parish, if any such be there residing, and consequently in all probability essentially interested in the poor rate. As to the matter of practice, it is certain that nothing is more common at the sessions, than applications for the maintenance of poor persons as well by original motion as by way of appeal from the order of private justices. In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind; as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alleged against removing the poor rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, does not hold with regard to appeals against orders of maintenance. The justices' order takes effect immediately, and continues in force till altered by other legal authority. The usual way is, for the justices to order the overseer to pay to the pauper so much weekly

or otherwise, until he shall be otherwise ordered according to law to forbear the said allowance, or, more generally, till further order. And this, if not acquiesced in, brings on an appeal to the sessions, where the court enlarges, mitigates, or takes off the charge, as they shall see cause.

Rex v. Winship, 5 Burr. 2677; *Cald.* 72. A pauper having refused to go into the poor house, the overseers refused to pay her the allowance. She applied to the quarter sessions, where an order was made of the sum in arrear, and 2s. a week. The overseers refused to pay the allowance, whereupon they were indicted. The Court of K. B. thought the general question of vast consequence, but gave no opinion upon the merits, holding the sessions order to be bad and illegal upon the face of it; "the sessions cannot make such an original order." Judgment for the defendants. In a note, Mr. *Caldecott* says, that *certainly the court made no such determination* as that expressed in the words marked by inverted commas. See *Cald.* 71, n.

14. Of Persons deserting their Families.

Punishment as a vagrant.

Order of two justices must state how much of the goods or rents should be seized, and must specify the quantum of relief to be appropriated out of them; and in case of rents must limit the period of such appropriations.

The 5 Geo. IV. c. 83, s. 3, enacted, that persons being able but wilfully neglecting to work to support their families, whereby they shall become chargeable to the parish, shall be deemed idle and disorderly persons, punishable by imprisonment and hard labour, not exceeding a month. And the fourth section declares that "every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they, or any of them shall become chargeable to any parish, township, or place, shall be deemed a rogue and vagabond, punishable as therein mentioned." See tit. *Vagrants*.

Stable v. Dixon, 6 East, 163. In covenant for rent, the defendant pleaded as to 7l. 16s. parcel of the rent, that before the rent became due, the plaintiff had gone away from his place of abode into some other place, leaving his wife chargeable to *Corney*; that he continued away from the 24th of June, 1801, to the time of the action brought, and that during all that time she continued chargeable; that it thereupon was necessary that she should be maintained by the parish: whereupon, upon application of the churchwardens of the parish, a warrant was directed by two justices to the said churchwardens and overseers, whereby (reciting as usual) they the said justices authorized and commanded the said churchwardens and overseers of *Corney* to receive the annual rents and profits of the lands and tenements of the plaintiff at *Bromhill*, towards the discharge of the parish at *Corney* for the providing for the plaintiff's wife, &c. On the 18th of July, 1801, the order was confirmed by the Court; and the Court did then order the overseers, &c., to receive 7l. 16s. rent of the rents of the lands of the plaintiff at *B.*, towards the discharge of the said parish for the providing the plaintiff's wife. And then the plea alleged payment. To this the replication was, that on the first of October, 1801, the said 7l. 16s. in the order of sessions mentioned, was paid by defendant to the then overseers of *Corney*, pursuant to the said order, and that on the 25th of March, 1802, the said 7l. 16s. was allowed by the plaintiff to the defendant out of the rent. To this replication it was by the defendant rejoined, that the said sum of 7l. 16s. so mentioned in the fourth plea to have been so paid, was another and a different sum of 7l. 16s. than the sum of 7l. 16s. so deducted and allowed as aforesaid, viz. for the second year's payment under the said order in the said plea mentioned. To this there was a demurrer. And it was urged, that the original order was void, as being prospective, to seize the rents and profits for future expenses; or if it might be prospective, still it did not ascertain the quantum of relief required by the parish, conformably with the words "so much" in the statute, and *Rex v. Chaffey*, 2 Id. Raym. 858, was cited. Also that the sessions had it only in their power to confirm the order, and direct a sale, and (perhaps) vary the sum before directed to be levied. And, that if the sessions could remedy any defect in the original order by ascertaining the sum to be raised, they have fixed it at 7l. 16s., and that sum is by the pleadings admitted to be paid and deducted out of the rent: the order therefore is *functus officio*; for it does not state that the same sum shall be raised annually. Lord *Ellenborough*, C. J., "The 5 Geo. I. gave to magistrates a power of appropriating to the purposes of the act so much of the goods and chattels, and so much of the annual rents and profits of the party, as they should order and direct, or as the sessions afterwards, to whose confirmation such order is to be submitted, should think fit. But it never was meant to invest the parish officers or magistrates with a right to take indefinitely all the property of such a person without apportioning how much of it was to be taken for that purpose. The language of the act is, that the goods and chattels, &c., are to be taken for or towards the discharge of the parish; which imports that it was to relieve the parish from a burthen already incurred, and which was therefore capable of being then ascertained. But even if they had a prospective power, still the justices are to ascertain how much is to be taken. The act expressly says, the officers shall take so much as the justices shall order. That makes it imperative on two magistrates to ascertain the sum: but if an order like this could be sustained, it would open a door to great vexation. If any person happened to go away, leaving his family a charge on the parish, it would authorize the justices to make the

parish officers trustees for the whole of his property to whatever amount. The original warrant then being made in the exercise of an indefinite instead of a limited authority, and being void in that respect, the next question is, Whether it were capable of receiving confirmation from the sessions? and assuming that it could, as capable of limitation in respect of the sum to be taken by the parish officers (for they seem there to have abandoned the ground of an indefinite seizure,) then can the order of sessions be sustained beyond the terms of it, as an order to receive the sum of 7*l.* 16*s.*? Admitting that it might be good to that extent, as an order to receive a definite sum (subject however to the objection to it as a confirmation of an original indefinite order of seizure), the answer is, that the sum is already paid and allowed: but taking it as it is now contended for, as an order to receive that sum annually out of the rents and profits without any limitation of time, the objection applies, that from want of such limitation, as, 'till some other order made,' it is void by the authority of the case mentioned. Therefore, unless the order of sessions be understood as limited to raise 7*l.* 16*s.* once for all, that would be invincibly bad; and if so understood, the order has been satisfied."—*Grose, J.*, "The defendant insists that the order of sessions authorizes the annual payment of 7*l.* 16*s.* for ever. If it do, such an order cannot be sustained for a moment, for the statute authorizes the overseer to take only so much as the justices shall direct: that is, so much as the parish shall have sustained. The intention of the legislature was only to indemnify the parish: and it meant either that the money ordered to be taken should have been expended by the parish, or that the justices should judge what was proper to be expended upon the family of the absconding man." *Lawrence, J.*, "The first order ought to have specified the sum to be raised: it should have specified how much property was to be seized, and then the order of sessions should have stated how much of that should be sold or appropriated. I cannot consider the order of sessions as directing that more than one sum of 7*l.* 16*s.* should be taken. If more had been intended they should have said so more distinctly, by adding the word 'annually,' or 'till further order.'" Besides, if the order were illegal, he should have refused payment, and if indicted for disobedience he might have defended himself; or he might have brought an action of trespass if his goods had been distrained, for he would not have been concluded by an order to which he was no party from showing that it was illegal. But I think the order of sessions only meant that one sum of 7*l.* 16*s.* should be taken." Judgment for the plaintiff.

It has been held, that if a man refuse to maintain his wife, but nevertheless remains in the parish, no order can be made on 5 Geo. I. c. 8, to seize his effects; but the wife must have recourse to the common remedy of suing for alimony; or any one who supplies her with necessaries may have his action against the husband for money expended to his use. (*Rex v. Justices of Kent*; *Burn's Justice*, 25th edit.)

Before this statute, the parish officers might have taken an assignment of the property of the husband, and there is nothing in this statute to prevent that. But as the land was conveyed in trust for the benefit of a charitable use, to the intent that the rents and profits may be applied to the use and benefit of the poor in aid of the poor rate, the deed is within the enacting clause of 9 Geo. II. c. 36, s. 1, and not being enrolled is void. It is not a deed within the 2nd sect.: made for a valuable consideration paid by the person to whom it is made.

Rex v. Flintan, 1 Bar. & Adol. 227. Upon appeal against a conviction of the defendant as an idle and disorderly person for refusing to maintain his wife. Conviction confirmed. Case:—*Elizabeth*, the wife of *W. H. Flintan*, became chargeable to the parish of *St. Andrew* on the 20th of February, 1829, and received from that time to the time of the conviction four shillings a week from the said parish. *W. H. Flintan* was then able wholly to maintain his wife. *W. H. Flintan* and his wife cohabited together for some years until the 26th of November, 1826, when they quarrelled on account of her having pawned some of their plate; and on the following day she quitted his house in his absence, and without his knowledge, and has not resided with him since.

If the husband remain in the parish, his effects cannot be seized for his wife's support. The act applies to runaways only.

Assignment by a pauper in custody to indemnify the parish for expenses incurred for his wife is good; but it is a charitable use and must be enrolled.

A man is not liable to the penalty of 5 Geo. 4, c. 83, s. 3, for neglecting and refusing to maintain his wife, who has left him and committed adultery; although he himself has been guilty of adultery since her departure.

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She subsequently sued her husband for alimony, by reason of adultery committed by the husband, who produced, in his defence, evidence of adultery committed by his wife; and the Court decreed, that *W. H. Flintan* had been guilty of adultery, and that the said *Elizabeth Flintan* had been guilty of adultery, and therefore dismissed *W. H. Flintan* from the citation. The adultery which was proved upon the wife had been committed while she lived with her husband, and without his knowledge or subsequent condonation; the adultery proved upon him did not take place till after that time, and after she had left him. The question for the opinion of this Court was, Whether *W. H. Flintan* was, at the time of the said conviction, legally bound, under these circumstances, to maintain his wife, within the meaning of the 5 Geo. IV. c. 83, s. 3? *Bayley, J.*, "This case is very clear. By this statute, a man is criminally answerable for refusing to maintain any of his family whom he is legally bound to maintain. That obligation must be made out; and it is not established in the case of a wife who has left her husband and lives in adultery." *Littledale, J.*, "I do not see the distinction attempted between the parish and an individual supplying necessaries. If the husband is not obliged to answer for the wife's contracts, or to receive her into his house, it cannot be said that he is 'legally bound to maintain her.'" *Parke, J.*, "It would be strange if the Court could hold that a man was not civilly liable for the supply of necessaries to his wife, and yet that not supplying them rendered him a vagrant." Conviction quashed.

Justices may order payment to overseers of the pensions, &c. of persons leaving their families chargeable.

Paymaster general, &c. to make payment accordingly.

How churchwardens to apply the same.

Justices empowered to order payment of wages of seamen, whose family, during his absence, has be-

59 Geo. III. c. 12, s. 31, enacts, "that when any pensioner or other person, entitled to or in receipt of any such pension or other allowance as aforesaid, shall leave his wife or family chargeable, or suffer them to become chargeable to any parish, it shall be lawful for two or more justices, upon complaint thereof to them made by any one or more of the churchwardens and overseers of the poor of such parish, and verified on oath, by order under their hands and seals to direct that the next payment which shall become due of such pension or other allowance, shall be made to the churchwardens and overseers of the poor of the parish to which such wife or family shall have become chargeable; and any one or more of such churchwardens and overseers of the poor shall transmit such order to the aforesaid commissioners for the affairs of the royal hospitals at *Chelsea* or *Greenwich*, or the secretary of the board of ordnance respectively, in like manner as any assignment is hereinbefore directed to be transmitted to the paymaster-general of his Majesty's forces, and the paymaster of pensions at *Greenwich*, the paymaster of the royal marines, and the secretary of the board of ordnance, as the case may be; which said paymaster-general, or paymaster of pensions at *Greenwich*, or the treasurer of the board of ordnance, shall thereupon, and upon sufficient proof being given that the person whose pension or other allowance shall be directed to be paid shall have been living when the same shall become payable, and would have been entitled to receive the same if no such order had been made, cause the said payment to be made to the churchwardens and overseers of the poor of the parish for whose security such order shall have been made: and the churchwardens and overseers of the poor receiving any such pension or other allowance by virtue of any such order, shall retain and apply the same, or so much thereof as shall have been actually expended for the purposes aforesaid, for the use and indemnity of the parish, and shall pay the overplus (if any there shall be) to the pensioner or person entitled thereto, and upon the receipt of any such order as aforesaid, by which the pension, or other allowance to be mentioned therein shall be directed to be paid to such churchwardens and overseers as aforesaid, the payment thereof shall be suspended, until sufficient proof shall have been given to entitle the churchwardens and overseers of the poor of the parish, in such order named, to receive the money thereby directed to be paid to them."

Sect. 32. "And whereas in many instances the wives and families of seamen employed in the merchants' service become chargeable to parishes, while their husbands and fathers are absent on such service, and it is expedient to provide for the indemnity of such parishes by and out of the wages of such seamen; be it therefore further enacted, that where the wife or family of any

seaman employed in any voyage or trip (not being his Majesty's service) shall, during his absence on such employment, become chargeable to any parish, it shall be lawful for two justices, upon complaint thereof to them made by any one or more of the churchwardens and overseers of the poor of such parish, and verified on oath, by order under their hands and seals, to direct the acting owner or owners, ship's husband, or agent of the ship or vessel in which such seaman shall be employed, to pay, out of the wages which shall become due to such seamen, unto the churchwardens and overseers of the poor of the parish to which his wife or family shall have become chargeable, so much as shall have been by such parish necessarily expended for their maintenance or relief, the amount, in case of any dispute, to be ascertained by two justices, whose determination thereon shall be final; and upon the production of any such order, the owner, ship's husband, or agent, by whom the wages of the seaman therein to be named shall be payable, shall pay to such one or more of the churchwardens and overseers of the poor of the parish for whose indemnity such order shall have been made, as shall demand the same, the sum and sums to be therein specified and directed to be paid, or so much thereof as the wages then due shall amount unto; and the payment to and receipt of any such churchwarden or overseer shall be a good discharge for so much of such wages as shall be paid to them or him by virtue of any such order; and if any such owner, ship's husband, or agent, shall refuse or neglect to pay to the churchwarden or overseer producing any such order, the money thereby directed to be paid, or so much thereof as shall be actually due for the wages of the seaman to be therein named, the same may be levied and recovered, and the payment thereof enforced, against the owner or owners, ship's husband, or agent, by whom the same shall be payable, in such and the like manner as poor's rates in arrear may be levied and recovered, and the payment thereof enforced, against the parties and persons chargeable and charged therewith: provided always, that nothing herein contained shall authorize or compel the payment of any sum or sums of money by such acting owner or owners, ship's husband, or agent, until the voyage in which the vessel shall be so engaged shall be completed, nor beyond the sum that shall be then actually due to such seaman, by such acting owner or owners, ship's husband, or agent, as wages or otherwise."

By 11 Geo. IV. c. 10, intituled, "An Act for the Relief of Parishes from the Expenses of Maintaining the Wives and Families of Men convicted under the Laws for the Prevention of Smuggling, and sentenced to serve his Majesty in his Naval Service," reciting that "whereas many seamen are now serving in his Majesty's naval service, by virtue of certain acts passed for the prevention of smuggling: and whereas it is expedient to make provisions respecting the payment and distribution of the wages of such seamen, and of such others as may hereafter enter the naval service by virtue of any act for the prevention of smuggling, and also respecting the relief of parishes to which the wives or families of any such seamen are or may become chargeable whilst they continue in the service; be it therefore enacted, that no person who shall be hereafter adjudged or entered to serve in his Majesty's naval service by virtue of any act made or to be made for the prevention of smuggling, shall be entitled to receive more than half the pay of his rating in the ship's books."

Sect. 2. "That the wages of every seaman now serving, or who shall hereafter be adjudged or entered to serve in his Majesty's naval service, under or by virtue of any such act made or to be made for the prevention of smuggling, whose wife or family is or shall become chargeable to any parish or place, shall from and after the passing of this act be distributed as follows; (that is to say,) a proportion, not exceeding one half, of the wages at which such seaman is rated in the ship's books shall be made available for the support of his wife and family; and in order to effectuate the said purpose, it shall be lawful for any one or more of the churchwardens and overseers of the poor of such parish or place where the wife or family of such seaman shall be or become chargeable, to make complaint thereof on oath to any two justices of the peace acting for the county in which such parish or place shall

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come chargeable, for the indemnity of parishes.

And the owner, &c. to make such payments to churchwardens, &c. accordingly.

And upon refusal, proceedings may be had against owner, &c. as in case of poor rates.

Persons adjudged to serve in the navy under the smuggling laws not to receive more than half the rating.

Distribution of the wages of seamen serving under the smuggling laws.

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be situate, and upon the transmission by the said justices of a certificate thereof to the commissioners of his Majesty's navy, specifying therein the proportion (not exceeding one half) of the wages they shall deem necessary to be paid for the relief of the parish, according to the circumstances, having regard to the number of the family; and the said commissioners shall thereupon take the requisite measures for causing payment thereof to such person as shall for that purpose be named in the justice's certificate, in the same manner and under similar regulations as allotments of seamen's wages are now or shall be payable, and that the monies so paid shall be applied towards the relief and indemnity of the parish; and all payments to be made by the treasurer of the navy, under the authority of this act, shall be deemed good and valid payments, and shall be allowed as such in his accounts."

15. *Of Relieving Casual Poor.*

1. *By whom to be relieved, and herein of Accident.*
2. *Scotch and Irish Poor, &c.*

1. BY WHOM TO BE RELIEVED.

15. *Of Relieving Casual Poor.*

1. *By whom to be relieved, &c.*

Duty of overseers to relieve.

It is contrary to the humane spirit of the English laws, that any individual shall be permitted to perish from starvation or want of medical assistance. Whoever is by *sudden emergency or urgent distress* deprived of the ordinary means of subsistence, has a right to resort for *immediate* relief to the overseers of the poor of the parish in which he may happen to be at the time when he is thus bereft of support, whether he has acquired a settlement there or not; and it is the bounden duty of the *overseers immediately*, and without waiting for an order of relief, to render the necessary assistance in such cases. This is clearly implied by various enactments regulating the mode of administering the parish funds, and authorizing justices of the peace to enforce this obligation upon overseers when they refuse relief to destitute applicants. See 3 W. & M. c. 11; 9 Geo. I. c. 7; 36 Geo. III. c. 23; 55 Geo. III. c. 137; 59 Geo. III. c. 12; 4 & 5 Will. IV. c. 76, s. 27, 54.

Duty of guardians to relieve.

And where *guardians* have been appointed under the 22 Geo. III. c. 83, the 38th section provides, that in case any poor person shall be retarded in his passage through a parish in which he has no settlement by accident, by dangerous illness, or bodily infirmity, the guardian where such distressed object shall be, shall provide lodging and suitable nourishment and assistance, and may recover the expenses from the guardian of the parish in which he is settled. It makes provision also for the burial of such persons if they die, and also of those found dead; (a) and by the 4 & 5 Will. IV. c. 76, s. 54,

(a) By 22 Geo. III. c. 83, s. 38, "if any poor person shall be retarded on his or her passage through any parish, township, or place, in which he or she has no legal settlement, by reason of his or her *meeting with any accident, or being afflicted with any dangerous illness or bodily infirmity, without the means of subsistence, or of proceeding to the place of his or her settlement, the guardian living near the place where such distressed object shall be, shall, and is hereby required, upon notice thereof, forthwith to provide lodging, and suitable nourishment and assistance (and also clothing, if necessary) for such person, until he or she can be removed with safety; and when such person shall be in a state of health fit to be removed,*

shall take such person to some neighbouring justices of the peace of the county, riding, division, city, or place, where such person was found, who shall examine him or her upon oath, touching the place of his or her settlement, and make an order for his or her removal thither, if they think fit: and the parish officer who shall so receive and provide for such person or persons as aforesaid, shall make a charge of the expenses attending the same, which, on being allowed and certified by the justices before whom such poor person shall be so taken, or some other neighbouring justices within the limit where such person was found, the same shall be paid by the guardian of the parish, township, or place, where such poor person shall be

in all parishes having guardians, or a select vestry, in cases of sudden and urgent necessity, the overseer is required to give temporary relief, whether the poor person is settled in his parish or not, and any justice of the peace may give an order for medical relief in cases of sudden and dangerous illness.

Where a person in need has no settlement, or it cannot be discovered, he must be relieved in the parish where he happens to be whilst remaining in a state of pauperism; and so also if he is irremovable.

There is also another class of paupers to be here mentioned, viz. persons born in *Scotland, Ireland, or the Isle of Man, Guernsey, or Jersey*, and who have acquired no settlement in *England or Wales*; and provisions have been made for their removal. Persons comprehended within any of the above descriptions are called "*casual poor*," the law with respect to whom will be here stated in detail. (See further who are *casual poor*, *Paynter v. Williams*, 1 *Crompt. & Mees.* 815, *per Bayley, B.*)

Where a bastard child is born, for whose support the parents neglect to provide necessities, the parish officers are obliged to do so, without an order of justices for that purpose. (*Hags v. Bryant*, 1 *Hen. Bla.* 253.)

Independent of the particular provision for places having guardians, mentioned in the note, it may now be considered as a general principle, that there is a legal and moral obligation upon the overseers of every parish to maintain every pauper, that meets with an accident or becomes afflicted with a sudden and dangerous illness in his parish; and that the parish cannot be relieved by causing such person to be removed to a neighbouring parish. It is true, that where an *inhabitant* of the parish is so afflicted, an order for his removal may be obtained, and execution of it suspended, and then the expenses incurred will be repaid by the parish in which the pauper is settled, if he was afterwards removed to it. But no such order can be obtained, where the pauper was accidentally in the parish, and has not come there to settle. Without such order, the parish in which the accident happens has no legal claim on the parish in which the pauper is settled; but if an overseer authorizes directly a surgeon to attend a non-resident parishioner, he is liable to the surgeon. It seems he is also liable, if after knowledge of the attendance of the surgeon, he sanctions it by requiring a fresh attendance. No promise can be implied from a *master* to pay a surgeon for his attendance on his ser-

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Who are casual poor.

settled, in case the same can be discovered, and shall happen to be within that county, on demand made thereof, and on the production of such allowance and certificate as aforesaid, or in default of payment, the same shall be levied upon the goods and chattels of any such guardian so making default, after due summons, by warrant from a justice of peace having jurisdiction there; and if any poor and sick person circumstanced as aforesaid shall die before he or she can be so examined, or if any poor person shall be found dead in any parish or place to which he or she did not belong, the guardian of such parish or place respectively shall, and is hereby required, in every such case, to cause such person to be buried in the parish, township, or place, where he or she so died or was found dead, and shall make a charge of the expenses attending the same respectively, which shall be allowed and certified by a justice of the peace, after examining into the place of his or her settlement, and shall be paid by the guardian of the parish, township, or place, where such person shall appear to have been settled, if the same shall be within that

county; but in case the settlement of such poor persons respectively cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of such county, riding, division, city, or place, where such person was so relieved, on the production of such allowance and certificate, out of the county or public money to be collected within his limit, and allowed to such treasurer in his accounts."

And by 33 Geo. III. c. 35, s. 3, "after the passing of this act, all such *casual poor* as may happen to be within, and would be entitled to relief from, any one of such parishes, townships, or places as have been, or may hereafter be, united together for the purposes of the act hereinbefore first mentioned, shall be relieved by all the said parishes, townships, or places conjointly, and in the same respective proportion as they shall and are directed to contribute for the general purposes of the said act, according to the provisions and regulations in the said act specified and contained."

And see *Rex v. Meredith*, *Russ. & Ry.* C. C. 46; *Car. Crim. Law*, 269; 3 *W. & M. c.* 11, s. 11.

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A labourer who in passing through a parish with a loaded cart breaks his leg by accident, is casual poor, and therefore no order of removal can be made with respect to him whilst he is unable to be removed. (a)

vant, who may meet with an accident in the discharge of his duty. These principles will be found to have been established in the following cases:

Rex v. St. James in Bury St. Edmunds, 10 East, 25. An order removed *S. Offord* from *St. James in Bury* to *Ixworth*. Order quashed. Case:—The pauper being settled in *Ixworth*, was employed on the 23d of December, 1807, as a day labourer, by *R. H.* of *Ixworth*, to drive a load of hay to *Bury*, and to return with a load of muck. In loading the muck, he fell and broke his leg. On the 24th of December, two magistrates took the pauper's examination, made out the order of removal, and (the pauper being unable to be moved) suspended the execution by an indorsement on the back of the order. The pauper was attended by a surgeon, by the order of the parish officers of *St. James*. On the 1st of April, 1808, the magistrate took off the suspension, and made the order for payment of the expenses. Lord *Ellenborough*, C. J. "No doubt can be raised on the question; no person is removeable from the parish where he is, but by positive statute. The 13 & 14 Car. II. c. 12, (which confers the power of removing) after reciting that poor people endeavour to settle themselves in those parishes where there is the best stock, &c., and when they have consumed it then to another fresh, &c. says, that it shall be lawful, on complaint of the parish officers, within forty days after any such person coming so to settle as aforesaid, in any tenement under the yearly value of 10*l.* for any two justices of the peace of the division where any person likely to be chargeable to the parish shall come to inhabit, by their warrant to remove him to the place of his last legal settlement. The expression of coming to settle, denotes the party comes *animo morandi*, or *manendi*; it may be for a temporary purpose, but still it must be understood that he comes to settle there. But how can it be said that the pauper went into this parish *animo morandi* at all? He went into the town with a cart of hay, which he was to dispose of, and return with a load of muck. How, then, can it be said that he went there to settle? Then, if he were not removable within the terms of the 13 & 14 Car. II., can we find any enlargement of the power of removal? The 35 Geo. III. has the words *inhabiting* or *sojourning*; but it would be an extravagant construction of either of those terms to say that it meant to include such a case as this. Then, if the order be not warranted by either of these statutes, there is no authority for it, and the sessions have done right to quash it. *Le Blanc*, J. said, that "it had been properly admitted, that 35 Geo. III. did not enlarge the 13 & 14 Car. II. The 35 Geo. III. was meant to provide that persons who by law were before removable, if likely to become chargeable, should not be removed till actually so; and to make provision for suspending the order of removal, when made in case of sickness or infirmity, and that the expenses incurred in the care and maintenance of the persons, between the order to remove and the actual removal of them, should be defrayed by the parish to which they should be found to belong."

But it is evident that the learned judge could not mean that the expenses incurred in a sickness or infirmity, produced by sudden accident, should be defrayed by the pauper's own parish.

Rex v. St. Lawrence, Ludlow, 4 B. & Ald. 660. Order of removal from *St. Lawrence, Ludlow*, to *Leinthall Starks, Salop*, discharged. Case:—On the 31st of October, 1818, *G. Thomas*, the pauper, was sent with his master's team for coals, and on the road, in the parish of *Bromfield*, was thrown down by the horses, by which means his thigh was fractured: the accident took place about half a mile from *Ludlow*, in the parish of *Bromfield*. A person passing by with an empty waggon took the pauper to the *Bell Inn*, in the parish of *St. Lawrence, Ludlow*, where the pauper was taken in, and remained fourteen weeks, attended by a surgeon. The overseers of *Ludlow* came to the *Bell* the same day, and examined the pauper, and directed the mistress of the house to take care of him: they also were present when the surgeon was there. On the 4th of November an order of removal was made by the magistrates, removing the pauper to *Leinthall Starks*. There was also an

Where a pauper is legally settled in *A.*, having met with a severe accident in the parish of *B.*, was carried into the adjacent parish *C.*, to be cured: Held that he was to be considered as casual poor in *C.*, and was irremovable, and that an order of removal to *A.*, suspended under the 35 G. 3, c.

(a) As to the removal of a person oscillating between two parishes, *Rex v. Birmingham*, 14 East, 251, post.

order of suspension. On the 17th of July, an order for the charges incurred by *St. Lawrence* was made. *Abbott, C. J.* "I am of opinion that in this case the sessions were right in holding that the pauper was irremovable. The *Rex v. St. James, Bury St. Edmunds*, seems to me to have been most correctly decided, and I do not think the present case materially distinguishable from it. But it is said that *Rex v. Birmingham, post*, is at variance with its authority. I am not of that opinion; but if it were necessary to decide between the two cases as conflicting authorities, I should adhere to the opinion of the court in *Rex v. St. James, Bury St. Edmunds*. For the 13 & 14 Car. II. c. 12, only gave a power of removal of those paupers who were coming to settle. Now how can it be said that this pauper was coming to settle in *St. Lawrence, Ludlow*? Nor does the 35 Geo. III. c. 101, make any difference, for previously to the passing of that act, a pauper under these circumstances could not have been removed. And that act only regulated the powers of removal already existing, but did not give any new power to the magistrates for removing paupers who were irremovable before. Order confirmed.

Lamb v. Bunce, 4 M. & Sel. 725. *Assumpsit* for a surgeon's bill. *Smith*, a carter to a farmer in *West Woodhay* parish, met with an accident, in driving his master's team, in the parish of *Hampstead Marshal*, by which one of his legs was fractured. He was immediately conveyed to the nearest and most convenient house, which was a public house situate in the adjoining parish of *Enborne*, and distant about a half a mile from the spot where the accident happened. *Smith*, not being in a condition to be removed to his master's, the plaintiff, who was a surgeon and was generally employed to attend the poor of *Enborne*, was sent for, but it did not appear by whom, and he attended him until he recovered. During his attendance, the defendant, the overseer of *Enborne*, frequently visited *Smith*, and knew that the plaintiff attended him, and when *Smith* was fit to be removed, took him in a cart to his master's at *West Woodhay*. *Smith* was not a parishioner of *Enborne*.

Lord Ellenborough, C. J., "This pauper was to be considered as casual poor wherever his infirm and indigent body was found, and he had a claim on the parish where he was so found to have his necessities provided for by them. That was the parish of *Enborne*, and I consider that when the parish officer visited the pauper according to his duty, and knew that the plaintiff, who was generally employed for the poor, was in attendance upon him, and did not repudiate his attendance, he in effect commanded it. It cannot be

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101, and a subsequent order on A., to pay the intermediate charges incurred by the parish of C., were invalid.

Where a pauper had his leg fractured in one parish, and was conveyed for cure to a house in another parish, the overseer of the parish where the cure was performed, was held liable for the expences. (a)

(a) In a former edition was the following note. It may sometimes happen that the parish where the accident occurs may not afford a proper place to give relief. The parish officers or others may, probably, without bestowing a thought upon the boundaries of parishes, do that which ought to be done immediately, namely, carry the pauper to the house nearest to the place where the accident happened, instead of conveying him to a considerable distance. In *Lamb v. Bunce*, the impression of the Court was, that the parish in which the house was situate was the proper parish to have given relief. There is no express decision upon this point, and Mr. Justice Bayley, it will be seen, reserved it, in giving his judgment in *Tomlinson v. Bentall*, (*post*, 92.) It can hardly be doubted, however, that whenever the question comes to be decided, that the Courts will follow up the manifest impression of these cases, and declare that this expense must be borne by the parish in which the

house is situate where relief is afforded, if such house is the nearest to the spot where the accident has happened, and has been chosen on that account alone, from a laudable anxiety to obtain for the pauper the most prompt and efficient assistance. It can make no difference in this respect, even where the pauper's settlement is in the adjoining parish. It is highly prejudicial to the rights of the poor, that when an accident has happened, the question should be agitated, or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen, which must fall somewhere, must be borne by them, or can, by any contrivance, be shifted to others. The various dicta upon this subject seem to establish that a pauper, become so under such circumstances, obtains a settlement *pro tempore* in the parish where the accident has left him to be relieved; and that his settlement in his own parish is suspended till the cause of its interruption is removed.

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matter of dispute in point of law, and I could wish it were so understood, that where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick as casual poor, to look to the supply of his necessities; and, if the parish officer stands by and sees that obligation performed by those who are fit and competent to perform it, and does not object, the law will raise a promise on his part to pay for the performance. Mr. *Shepherd* has argued that a moral obligation is not sufficient to raise an implied promise to a third person, but I think this case is out of that objection, because the defendant, by not repudiating the plaintiff's attendance, did that which is equivalent to a previous request. As to the objection that the parish of *Hampstead Marshal* was the place where the accident and injury arose, there is no pretence for saying that there is an exclusive liability attaching to the parish upon that account; there is no reason for connecting the place where the accident happened with the liability." *Le Blanc, J.* "There is no doubt that if the parish officers had sent for the plaintiff to attend the pauper, he would have been bound so to do. For here the plaintiff was in the habit of attending the parish poor; therefore he was not a stranger, but a person pointed out by the parish as the person to attend to this duty. He does attend, and this with a full knowledge of the parish officer, who does not make any objection on his part; consequently the parish officer must be taken to have assented to it. Therefore, there is quite sufficient to raise the presumption of a previous request."

In case of accident to a poor person, it is the duty of the overseers of the parish in which the accident happened to provide necessary medical and other relief, and such parish is bound to pay all needful expenses.

Tomlinson v. Bental, 5 B. & C. 738; 8 D. & R. 493, S. C. *Assumpsit* for a surgeon's bill. The plaintiff was a surgeon. The defendants in 1824 were overseers of the parish of *Heybridge*. In October in that year *P. Bannister*, a poor woman belonging to the parish of *Malden*, returning from *Witham* to *Malden* in a cart, about ten o'clock at night, was thrown out of the cart in the parish of *Heybridge*, near to a public house there called the *Hoy*. Her thigh was broken, and she was otherwise much hurt. The constable of *Heybridge* being sent for, desired her to be sent out of that parish. She was placed again in the cart, and taken over a bridge (which divides *Heybridge* and *Malden*); the driver of the cart then remonstrated with the constable, and told him that he was wrong in removing her from *Heybridge*. Upon this the constable ordered her to be taken back to *Heybridge*, and said he would go and consult a neighbouring magistrate. The magistrate, who was also churchwarden of *Heybridge*, advised him to take the woman to the nearest public house and send for a doctor. The landlord of the *Hoy* refused to take her in. The driver of the cart then suggested to the constable to take her to the poorhouse. The constable said he did not know where they would put her. The pauper, who had been exposed to the cold air for some hours, said, "if you do not know where to put me, for God's sake take me home." The constable desired a bystander to pay attention to the request made by the pauper to be sent home, as it was likely they might be called to speak to the fact upon some future occasion. She requested not to be put under the care of the plaintiff, (who was apothecary of the parish of *Malden*,) but of one *Thorpe*, who was apothecary of *Heybridge*. The constable then desired her to be taken to *Malden*. The driver of the cart refused to take her back to *Malden*, unless the constable would give him a note that she should be taken care of by the parish of *Heybridge*. The constable said he would, but he did not. He accompanied her to her house at *Malden*, where she arrived about two o'clock in the morning, and asked *Thorpe* to attend her, and told him the pauper was at her own house. *Thorpe* said that in that case he, as the apothecary of *Heybridge*, had nothing to do with her. The constable then sent for *Tomlinson*, and the latter attended her for several weeks. *B. Graham* was of opinion, that there was some evidence to go to the jury, that the magistrate, who was churchwarden, and the constable, felt the obligation to afford the pauper relief, and that the constable actually undertook to pay the plaintiff for his attendance; and secondly, he was of opinion, that as the accident which happened in the parish of *Heybridge* was one which required immediate care and attention, it was the duty of

the officers of that parish to have taken the pauper to the house nearest to the place where the accident happened, and where they could procure accommodation for her, and to have provided medical assistance immediately; and if, as humanity required them to have done, they had sent for a surgeon to attend her in that parish, they would clearly have been liable; and that they could not, by neglecting their duty and removing her to another parish, relieve themselves from that liability which the law had cast upon them. Verdict for the plaintiff.

Abbott, C. J., "The pauper met with the accident in *Heybridge*, an accident that entirely incapacitated her from going to her own place of abode; and, therefore, if she had been taken to any house in *Heybridge*, as she ought to have been, and relief had been administered to her there, it is clear that the parish officers would have been liable for the expenses of her cure. *Rex v. St. James, in Bury St. Edmund's*, (*ante*, 90,) is an authority to show that it would not have been competent to the parish officers to have removed her, as a person coming to settle in *Heybridge*. If she had been taken to a house in *Heybridge*, therefore, the parish officers would have been under a moral and legal obligation to provide assistance for her. One of the parish officers did very properly recommend her to be taken to the nearest public-house, which was in *Heybridge*. The occupier of that house did not think proper to open his doors and receive her. A proposition was then made to take her to the poorhouse; and upon the way thither, some conversation took place, which excited in the mind of the poor woman (who at that time had been lying in the cold some hours) an alarm, whether, when she arrived there, she should be properly treated, and she said, 'for God's sake, take me to my own house!' and she was then taken home. The first proposal was to take her to her own parish; but, upon a remonstrance by the driver of the cart, the constable desisted. She was, however, ultimately taken to her own house. The constable of *Heybridge* sent to the plaintiff, and desired him to take care of her. As the parish officers of *Heybridge* must have paid for the medical attendance if she had remained there, it seems to me that the removal from that parish to another, (although it was her own,) coupled with the fact that the surgeon was called in from the parish of *Malden*, does not relieve the inhabitants of *Heybridge* from the obligation to which they would have been clearly liable, if this woman had been taken to some house in that parish, and taken care of there: and for these reasons I think that the verdict was right." *Bayley, J.*, "I am of opinion that the verdict was right. It is of very great importance, with a view to the protection to which the poor are entitled, that it should be fully understood upon whom, under such circumstances as those which have occurred in the present case, the legal obligation to provide medical attendance attaches. I do not put the case upon the ground of moral obligation, or upon the ground of the constables having sent for and employed the plaintiff; but I put it upon the ground that the law imposed a legal obligation upon the parish officers of *Heybridge* to employ a surgeon for the cure of the pauper. I think it is highly prejudicial to the rights of the poor, that when an accident has happened, the question should be agitated or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen which must fall somewhere, must be borne by them, or can by any contrivance be shifted to others. It is of importance, therefore, that it should be certain upon whom the obligation to provide medical attendance rests. For otherwise the consequence will be, that poor persons, who ought not to be removed from the place where they have met with an accident, will, perhaps, at the risk of their life, but certainly with great aggravation of their sufferings, be removed to a distance. In this case the pauper met with the accident in *Heybridge*, which incapacitated her from moving herself from the spot where it happened. The best and most obvious course would have been, to have done that which the magistrate of the place suggested should be done, viz., to have removed her into the public-house, but if she was not placed there, she ought to have been placed in the poorhouse, or, at all events, she ought to have been sent to some house in the parish. I am of opinion that when the parish officers refused her an asylum in that parish where she was

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entitled to have it, and forced her to go to her own house, all the attendance given by the plaintiff in the parish of *Malden*, in consequence of the wrongful conduct of some of the parishioners of *Heybridge*, is to be considered as if it had been given in the parish where the accident happened, and as if the house which she occupied had been in the parish of *Heybridge*. Although the attendance was not given in the parish of *Heybridge*, but in the parish of *Malden*, yet as one of the parish officers of *Heybridge* knew that the attendance was indispensably necessary, and that the removal from *Heybridge* to *Malden* had been wrongful; it seems to me exactly the same as if the parish officer had stood by and seen the attendance of the surgeon upon the pauper in the parish of *Heybridge*. There was a subsequent case of *Gent v. Tomkins* (*Trinity term*, 1822), in this Court, which seems to support the principle, that the law casts the obligation of providing medical attendance for a pauper disabled by an accident, upon that parish where the accident has happened. In that case the action was brought, not against the overseers of the parish in which the accident happened, but against the overseer of the parish to which the pauper belonged, and the Court intimated a very strong opinion that it was not properly brought against the overseer of the latter parish. It may sometimes happen that the parish in which the accident happens may not be the proper place to give relief. It may happen that the parish officers, without entering into the question what are the limits of particular parishes, will do that which ought to be done immediately, namely, carry the pauper to the house nearest the place where the accident happens, instead of carrying her to a considerable distance. In *Lamb v. Bunce*, ante, 91, the impression of the Court was, that the parish in which the house was situate was the proper parish to have given the relief; but, without deciding that point, I am of opinion that in this case, inasmuch as the accident happened in the parish of *Heybridge*, and that was the place where, under all the circumstances, the pauper was entitled to receive surgical assistance, the plaintiff is entitled to look to the parish of *Heybridge* for payment of his bill." *Holroyd, J.*, "The accident having happened to the pauper in the parish of *Heybridge*, it was the duty of the officers of that parish to provide medical assistance for her there. They might have done that, although the occupier of one public house refused to receive her. But I think they could not, by removing her elsewhere, shift upon other people that burthen which the law cast upon themselves; and that, whether they procured the medical assistance to be given in the parish or out of the parish, they are liable." *Littledale, J.*, "Whenever any accident happens to a poor person of such a serious nature as to render removal out of the parish dangerous or improper, I think the law casts an undoubted obligation on that parish to administer all necessary relief. If the pauper in this case had actually been taken to a house in *Heybridge*, and resided there while the surgeon was attending her, that parish would have been liable for her cure; but it appears to me that, under the circumstances of this case, she was improperly taken out of the parish; and that any officer or inhabitant taking her to another parish, where it was improper to take her, cannot by so doing release the inhabitants of the former parish from the obligation."

If a pauper meet with an accident in a parish not his own, and he is attended by a surgeon there, no legal obligation lies upon the overseers of the pauper's parish to pay the surgeon's bill. (a)

Gent v. Tompkins, 1 D. & R. 541. The plaintiff, a surgeon at *Winslow*, was called in to attend one *Tyrrell*, a pauper of *Newton Longville*, who had met with an accident in the former parish. *Tyrrell* was confined at *Winslow*, and regularly attended by the plaintiff till he was removed to his own parish, of which the defendant was an overseer. Previous to *Tyrrell's* removal from *Winslow*, the defendant called upon the plaintiff, and desired him to take care of the pauper, and do what he could for him, and added, "that he

(a) This case (as *Sneath v. Tomkins*) is noticed in a note 1 Car. & P. 132, where the reporters say "that it was intimated from the bench, that two of the judges thought it highly doubtful whether, as the pauper was casual poor in B., there

was any consideration even for a subsequent express promise by the overseer of A., and they had very great doubts whether the action could be maintained, as this promise came within the rule of *nudum pactum*."

would see him paid;" and, on a subsequent application by the parish officers of *Winslow*, the defendant said, "that if it was right that they should pay the surgeon's bill, they would." The plaintiff originally made the parish officers of *Winslow* debtors in his bill, but subsequently altered it, and debited the parish officers of *Newton Longville*.

Abbott, C. J. said, he was quite satisfied there was not in this case any legal obligation upon the defendant to pay the plaintiff's demand in the first instance, or to provide for the pauper. The court said they were clearly of opinion there must be a new trial, in order that the jury might distinctly consider whether the attendance of the plaintiff upon the pauper, after the accident, was in consideration of the defendant's express promise to pay.—Rule absolute.

Paynter v. Williams, 1 *Crompt. & Mees.* 810. Lord *Lyndhurst*, "The facts of the case are, that the pauper being settled in *G.*, resided in *F.* for some time, during which he received an allowance from his own parish; that allowance was afterwards discontinued, the overseers saying they would not pay him any more unless he removed into his own parish. He was afterwards taken ill, and attended for nine weeks by the plaintiff (a surgeon); then a letter is taken to the overseers of *G.*, and they directed the allowance to be renewed, and it was continued to the death of the pauper. They knew, therefore, of the pauper's being there; that in my opinion amounts to a request on the part of the officers that the pauper should not be removed, and to a promise that they will allow what is requisite. They knew by the same letter of the plaintiff's attendance. This in my opinion was an acceptance of the plaintiff's services, and created a legal liability." *Bayley, B.*, "The legal liability of the parish was not alone sufficient to enable plaintiff to maintain this action without a retainer or adoption by the parish. The legal liability does not give any person who chooses to attend a pauper a right to call for payment. In *Wing v. Mill*, (1 *Bar. & Ald.* 104,) the parish officers knew of the attendance, and sanctioned it." Verdict for plaintiff for the amount of expenses incurred after the letter.

If a stranger gives an order for the attendance of the plaintiff as a surgeon, he is liable. There can be no implied promise from a deputy overseer. (*Watley v. Walters*, 1 *C. & P.* 132.)

Simmons v. Wilmott, 3 *Esp. R.* 91, Lord *Eldon* held that the parish was not merely liable to a surgeon who exerts his professional skill, and gives the requisite medical attention to a pauper under such circumstances, but that a common person who took care of an individual who had been severely bruised by accident, by being thrown off his master's cart, so as to render it unsafe to remove him, and was carried to such person's home, who attended him for ten days and provided a nurse, &c., might recover against the parish for the lodging, maintenance, &c., of the individual so relieved, as he came within the description of casual poor.

Atkins v. Benwell, 2 *East*, 505. The plaintiffs were the parish officers of *Toddington*, and the defendants of *Milton Bryant*. *J. Mitchell* was a pauper settled at the time of his illness and death in *Milton Bryant*, but resided with his family at *Toddington*, and was there suddenly attacked with dangerous illness, which prevented his being removed from the place of his residence to that of his settlement without endangering his life. The plaintiffs gave notice to the defendants of the illness of their pauper within two or three days after the pauper was so taken ill; and the pauper, about three weeks from such notice, died in *Toddington*; and the plaintiffs, from the time of such notice, laid out 14*l.* 12*s.* as well for necessaries for the pauper and family, as for medicines, and also on the funeral. The present action was brought to recover that sum. The jury found that there was no express promise of the defendants to pay it to the plaintiffs. *Watson v. Turner*, (*Bul. Ni. Pri.* 129, 147, 281,) was cited, where, however, there was a special promise to pay the plaintiff's bill. Lord *Ellenborough, C. J.*, "That last cir-

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Acquiescence in a surgeon's attendance upon a non-resident parishioner, raises a promise by the overseer to pay; but without evidence of express employment or acquiescence of overseer, a surgeon cannot recover.

Parish liable for all attendance in cases of accident.

The law will not raise an implied promise in the parish where a pauper is settled, to reimburse the money laid out by another parish in which he happened to be, in providing necessary medical assistance for him. (a)

(a) In this case an order of removal *Milton Bryant* would have been liable might have been obtained, and execution if the pauper had been afterwards removed of it suspended; and then the parish of moved.

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A master is not liable, upon an implied *assumpsit*, to pay for medical attendance on a servant who has met with an accident in his service.

The master of a servant, whose limb is fractured by an accident in the course of his duty, is not liable to the expense of his cure, but he is casual poor, and must be supported by the parish in which the accident happened.

cumstance makes all the difference. A moral obligation is a good consideration for an express promise; but it has never been carried further, so as to raise an implied promise in law. There is no precedent, principle, or colour for maintaining this action." *Le Blanc, J.*, "There was a moral as well as legal obligation to maintain the pauper in his illness in the parish where he was at the time."

Wennall v. Adney, 3 Bos. & Pul. 247. This was an action to recover the amount of a surgeon's bill for attending the servant of defendant, who had broken his arm and was carried to the house of his mother, where the surgical attendance was given. As the defendant had not employed the plaintiff, or made any promise of payment, the plaintiff was nonsuited. Lord *Alvanley*, C. J. "I have reason to believe that the opinion delivered by Lord *Kenyon*, in *Scarman v. Castell*, (a) was not a hasty opinion, but formed upon reflection. I have no difficulty, however, in saying that I concur with the learned judge before whom this cause was tried, in thinking that the defendant is not liable. In this kind of question much may depend upon the nature of the contract entered into between the master and the servant. Sometimes a master engages to supply his servant with necessary victuals, and it may undoubtedly be argued, that necessary victuals mean such victuals as may suit the state of health or infirmity in which the servant happens to be; as if a servant be in need of wine, or victuals of that description, which are given by way of medicine. It is sufficient, however, to observe, that previous to *Scarman v. Castell*, there is no authority in the law of *England* to be found, which warrants the position contended for on the part of the plaintiff. I have no doubt whatever that parish officers are bound to assist, where such accidents as these take place; and that the law will so far raise an implied contract against them, as to enable any person who affords that immediate assistance which the necessity of the case usually requires, to recover against them the amount of money expended." The other judges fully concurred.

Newby v. Wiltshire, *Cald.* 527; 4 *Dougl.* 283, S. C. This was an action brought by an overseer of one parish against the defendant, for expenses incurred in the cure of the defendant's servant, whose limb had been fractured by his falling from the shaft of his master's waggon, in the parish of which the plaintiff was overseer. The defendant knew of the accident the same night it happened, and visited the boy during the cure, and afterwards received him to complete his year's service, and paid him his whole year's wages. Lord *Mansfield*, "Whether judicially said, or when other subjects were under consideration, I cannot help thinking in general, that a master ought to take care of his servants in sickness. Upon every principle of humanity he ought; but the question here is, what is the *law*? and no authority has been produced to show that the parish have a remedy over against the master; and it cannot be. Parishes are bound to take care of their casual poor. There is no express contract to this purpose, nor can any be implied." *Postea* to the defendant.

2. SCOTCH AND IRISH POOR, &c.

2. Scotch and Irish poor and their families. Power to two justices in *England* to remove chargeable poor born in *Scotland*, *Ireland*, &c., although they have not committed any act of vagrancy.

By 59 Geo. III. c. 12, s. 33, "Whereas poor persons born in *Scotland* and *Ireland*, and in the isles of *Man*, *Jersey*, and *Guernsey*, frequently become chargeable to parishes in *England*, and no provision is made for the removal of any such poor person, unless he or she shall have committed some act of vagrancy, and shall be adjudged to be a rogue and vagabond; and no person so adjudged can be lawfully removed without having been first publicly whipped or imprisoned in the house of correction: and whereas it is expedient to authorize the removal of such poor persons, although they may not have committed any act of vagrancy, and to authorize justices of the peace to cause such of them as may be adjudged to be rogues and vagabonds, to be conveyed by a pass, without having been first whipped or im-

(a) 1 *Esp.* 220. There Lord *Kenyon* ruled that the master was liable for medicines supplied to his servant under his own roof.

prisoned: be it therefore further enacted, that it shall be lawful for two justices of the peace, and they are hereby required, upon the complaint of the churchwardens and overseers of the poor of any parish, that any persons born in Scotland or in Ireland, or in either of the isles of Man, Jersey, and Guernsey, hath become chargeable to such parish, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person, and any other witness or witnesses, on oath, touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the united kingdom called England; and if it shall be found by such justices that the person so brought before them was born in Scotland or Ireland, or in either of the isles of Man, Jersey, and Guernsey, and hath not gained any settlement in England, and that he or she hath actually become chargeable to the complaining parish, by himself or herself, or his or her family, then such justices shall, and they are hereby empowered, by a pass under their hands and seals, in the form or to the effect prescribed by the act passed in the seventeenth year of the reign of his late Majesty King George the Second, to amend the laws relating to rogues and vagabonds, (*mutatis mutandis*), to cause such poor person, his wife, and such of his or her children so chargeable as shall not have gained a settlement in England, to be removed to the place of his or her birth, or last legal settlement, in the manner by the said act directed for the removal of rogues and vagabonds to Scotland and Ireland, and the isles of Man, Jersey, and Guernsey; and all constables and other officers, and all masters of vessels, are hereby required to convey every person so to be passed in the manner by the said act directed for the conveyance of rogues and vagabonds."

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The 11 Geo. IV. c. 5, repeals the several provisions relating to removal of paupers, born in Guernsey and Jersey, contained in 17 Geo. II. c. 5, 59 Geo. III. c. 12, and 5 Geo. IV. c. 83, and enacts, by sect. 2, "that it shall be lawful for two justices of the peace, and they are hereby required, upon the complaint of the churchwardens and overseers of the poor of any parish, that any person born in either of the isles of Jersey or Guernsey hath become chargeable to such parish, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person, and any other witness or witnesses, on oath, touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called England; and if it shall be found by such justices that the person so brought before them was born in either of the isles of Jersey or Guernsey, and hath not gained any settlement in England, and that he or she hath actually become chargeable to the complaining parish, by himself or herself, or his or her family, then such justices shall, and they are hereby empowered, by an order of removal under their hands and seals, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed, by and at the charge and expense of the complaining parish, to the place of his or her birth."

Power to remove chargeable poor born in Jersey or Guernsey, at expense of complaining parish.

Rex v. Leeds, 4 B. & A. 498. An order for removing *Hannah*, the wife of *T. Robinson*, and her children, from *Leeds* to *Almondbury*, was discharged. Case: The husband of *Hannah* was a *Scotchman*, residing at *Leeds* with his family, and had not acquired any settlement in *England*. Not being able to maintain his wife and children, they were obliged to apply for relief to the township of *Leeds*, and were actually chargeable to that township at the time of the order. He consented that his wife and children should be removed to *Almondbury*, the place of his wife's maiden settlement.

The wife and unemancipated children of a *Scotchman*, who has not acquired any settlement in *England*, must, if chargeable, be sent by a pass along with the husband to *Scotland*, and cannot be removed to the maiden settlement of the wife.

Abbott, C. J. This question arises out of the compulsory power formerly vested in justices of the peace, of removing a wife from her husband by consent: and it is one, and that not the smallest of the evils attendant on the poor laws, that cases should have arisen under them, in which this court has held that such a removal, amounting to a temporary divorce, might lawfully

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be made. It is to be observed, however, that in *Rex v. Eltham*, (a) there was the consent of both husband and wife to the separation. I am very glad we are relieved by this act of parliament from the necessity of considering those cases. I think it is impossible to read the words of the 33d sect. of 59 Geo. III. c. 12, without seeing that the magistrates have now the power in cases like the present, of sending the husband, together with his wife and family, by a pass to *Scotland*; and, having this power, I am of opinion that they cannot now remove the wife and family to her maiden settlement, so as to separate her from her husband. I think, therefore, that the order of sessions was right, and ought to be confirmed.—*Bayley, J.* It is against public policy and good morals, to permit the separation of husband and wife, even with their consent. This question, however, turns on the 59 Geo. III. c. 12. s. 33, which enacts, that it shall and may be lawful for the magistrates, and they are thereby required, in certain specified cases, to cause persons born in *Scotland*, &c., to be brought before them. Now these are words of compulsion on the magistrates to institute proceedings in cases like the present. The act then provides, that the justices shall enquire into the settlement of the head of the family and his or her children, in order, as it seems to me, to ascertain whether any of those children have been emancipated. It then enacts that such justices shall and are hereby empowered to cause such poor person, his wife, and such of his children as have not gained a settlement in *England*, to be removed by a pass to *Scotland*. Now it is to be observed, that the wife is thus for the first time, introduced in the latter part of this clause, which is perfectly silent in the prior part of it, as to any enquiry to be made by the justices respecting her settlement. I think therefore that the magistrates have no discretion given them of removing the wife to her maiden settlement, and thereby of separating her and her family from the husband. If the magistrates remove at all, they must remove the whole family together to *Scotland*, under the provisions of this act of parliament.—*Holroyd, J.* The words of this clause are imperative on the magistrates, in case they make any order, to remove the whole family to *Scotland*, and not, as they have done here, to remove the wife and family to the place of her maiden settlement. By the act, if the husband becomes chargeable by himself, or his family, he may be removed; and it seems to me, that it is altogether immaterial, provided the head of the family be born in *Scotland*, whether the children be born in *England* or not. The only exception is as to those children who have gained settlements in *England* in their own right. Then, as a power is now given to remove the husband, the wife must be removed with him: for the power of removing her to her maiden settlement was allowed to exist only from the necessity of the case, and must cease with it. It seems to me that we cannot narrow the construction of the words of this statute, unless, in so doing, we clearly saw that we should further the intention of the legislature. And as I do not think that their intention was to prevent the removal of the whole family together, I am of opinion that the decision of the sessions was right.—*Best, J.* If the point decided in *Rex v. Eltham* were to occur again, I think it would perhaps be worth considering whether that decision could be supported. It is, however, not necessary to determine that question now, because I am clearly of opinion, that, under the clause of this act of parliament, it is imperative on the magistrates to remove the whole family to *Scotland*. It seems to me that clearer terms could not have been used. For the act expressly says, "that the magistrates shall, and they are hereby empowered, to remove such poor person, his wife, and such of his children as have not gained a settlement, to the place of his birth or last legal settlement." The statute could not, therefore, mean to leave a discretion in the magistrates as to whether they would exercise this power or not. And by adopting this construction, we shall, as it seems to me, further the object of the statute, which was to remove the inconvenience which existed from idle and improvident persons coming to this country, and remaining here irremovable with their wives and families. Any other construction would produce great

(a) 5 East, 113. See the case at length, *post*.

inconvenience. It is quite clear that the head of the family may be removed; and if he should be removed, after the separation from his family, the wife and children would, in all probability, remain permanently chargeable. Order of sessions confirmed.

Rex v. Whitehaven. 5 B. & A. 720; 1 D. & R. 384; and D. & R. Mag. Ca. 77. Case: The pauper, *Mary M'Cornick*, an unmarried woman with child, and thereby chargeable, but who had not applied for or received parochial relief, was removed from *Whitehaven* to *Workington*, as the place of her birth settlement. The pauper, at the time of her removal, was above the age of twenty-one, had gained no settlement for herself, was unemancipated, and living with her father and mother, as part of their family. The father and mother were both *Irish*, and had gained no settlement in *England*. The father had not applied for or received any relief from the removing township, for himself or any part of his family.

Per Curiam. We are of opinion that the chargeability contemplated by the legislature in 59 Geo. III. c. 12, s. 33, was the actual asking for parish relief, and not the constructive chargeability created by 35 Geo. III. c. 101, s. 6.

Rex v. Cottingham, 7 B. & C. 615; 1 M. & R. 439, 469; 1 M. & R. Mag. Ca. 130, 137. Case:—*Anne O'Hara's* maiden settlement was in *Cottingham*, and she had acquired no subsequent settlement. The settlement of her eldest child *Henry*, who was a bastard, was also in that parish. *Patrick O'Hara*, a native of *Ireland*, was married to *Anne*, on the 28th of *April*, 1819, and the three youngest children were the issue of such marriage; he had no settlement in *England*. In 1819, after the marriage, and whilst *Patrick* and his wife resided at *Hull*, *Anne* and her eldest son became chargeable to *Hull*, and were thereupon (with the consent of the husband) removed to *Cottingham*, the place of her maiden settlement, and the order of removal upon that occasion stated her to be the wife of *Patrick*, an *Irishman*, who had no settlement in *England*, and the said *P. O'Hara* had consented to her removal. This order was not appealed against, and the appellant parish granted relief to *Anne* and her said child for a short time. In 1827, *P. O'Hara* having left *Hull*, and it not being known what had become of him, the wife and family again became chargeable to the parish of the *Holy Trinity*, who, as above stated, removed them to *Cottingham*.

Bayley, J. This is a very plain case. Before the 59 Geo. III. c. 12, passed, it was clearly established by a series of authorities from *St. John's, Wapping, v. St. Botolph's, Bishopgate*, to *Rex v. Harberton*, that where a woman had a settlement, married, and was deserted by her husband, who had no settlement, the maiden settlement of the wife was thereby revived, and she might be removed thither. Here the husband at the time when the order of removal was made had deserted his wife, and she did not know where he was. According to the authorities she was clearly removable to *Cottingham*, unless the law in this respect has been altered by the 59 Geo. III. c. 12, s. 23. The object of the legislature was to relieve parishes from the necessity of maintaining, as casual poor, persons born in *Scotland* or *Ireland*; and with that view it authorizes their removal to the place of their birth, together with their wives, &c. The statute does not authorize the removal of the wife alone to the place of the birth of the husband; and the husband having quitted the parish could not be removed to *Ireland*, and that being so the wife could not be removed without him. This is a case, therefore, not within the act of parliament, and the law applicable to this case remains as it was before the passing of the act. In *Rex v. Heaton Norris*, the same construction was put upon this statute. In that case, a *Chelsea* pensioner, born in *Scotland*, left his wife and family at *Heaton Norris* whilst he came to do town duty, and in his absence the wife and family were removed to the wife's maiden settlement. On appeal, the sessions stated a case, in which the only question they put was, whether under the 59 Geo. III. c. 12, s. 33, the removal ought to have been to *Scotland*? The judges thought not. In *Rex v. Leeds*, (*ante*, 97,) it was only decided that where the husband (who was born in *Scotland*) and his wife were living together, the wife must be sent

2. *Scotch and Irish Poor.*

Where the unemancipated daughter of an *Irishman*, not having acquired any settlement of his own in *England*, became pregnant, and as such chargeable: held, that this did not make her father and family removeable by a pass; but that she might be removed to the place of her birth.

The wife of an *Irishman*, who has no settlement in *England*, may if deserted by him be removed to her maiden settlement.

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along with him to *Scotland*. The law applicable to this case remains the same as it was before the 59 Geo. III. c. 12; it follows, therefore, that the wife and children were clearly removable to the place of her maiden settlement. No mischief will result from this decision, for during the absence of the husband, the family will be maintained by the parish which is bound to maintain them, and upon his return that parish may pass him and his family to *Ireland*.

CHAPTER II.

OF THE POOR RATE.(a)

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(a) As to the *Labour Rate Act*, 2 & 4 & 5 Will. IV. c. 76, does not affect 3 Will. IV. c. 96, see *post*. It will be found that the *Poor Law Amendment Act*, ing Act, 11 Geo. IV. c. 27, s. 25.

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1. *Origin and Progress of Enactments respecting this Parochial Fund.*

1. *Origin and Progress of Enactments respecting this Parochial Fund.*

THE Revenue or Income out of which the *Poor* are to be relieved is either *general* or *ordinary*, arising from *general rates*, usually made twice or oftener in every year; or, *extraordinary* and *casual*, as in the instances of penalties given for numerous offences, half to be paid to the overseers for the use of the poor of the parish. Of late such penalties have in general been made payable in aid of the *County Rate*.

The ancient statutes prescribing compulsory maintenance.

It is curious to a contemplative person to investigate by what steps and degrees the compulsory maintenance became established in this kingdom. By a statute made in the 12 Ric. II., viz. c. 7, the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the *hundred*; within which districts they were allowed to beg.—By 22 Hen. VIII. c. 12, the justices were to distribute themselves into several *divisions*, within which divisions respectively they might license persons to beg.—By 27 Hen. VIII. c. 25, the several *hundreds*, *towns corporate*, *parishes*, or *hamlets*, were required to *sustain* the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging, on pain that every person making default should forfeit 20s. a month; and the churchwardens or other substantial inhabitants were to make collections for them with boxes on *Sundays*, and otherwise at their discretions; and the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful.—By 1 Ed. VI. c. 3, houses were to be provided for them by the devotion of good people, and *materials* to set them on *work*; and the minister, after the *Gospel* every *Sunday*, was specially to exhort the parishioners to a liberal contribution.—By 5 & 6 Ed. VI. c. 2, the collectors of the poor on a certain *Sunday* in every year, immediately after divine service, were to take down in writing what every person was *willing* to give weekly for the ensuing year, and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the bishop

of the diocese, and the bishop was to send for him to induce and persuade him by charitable ways and means, and so according to his discretion to take order for the reformation thereof.—By 5 Eliz. c. 3, if he stood out against the bishop's exhortation, the bishop was to certify the same to the justices in sessions, and bind him over to appear there; and the justices at the said sessions were again gently to move and persuade him, and finally, if he would not be persuaded, then they were to assess him what they thought reasonable towards the relief of the poor, and in case of refusal were to commit him till paid.—By 14 Eliz. c. 5, power was given to the justices to lay a general assessment, and this hath continued ever since, for the 43 Eliz. c. 2, only re-enacts former provisions with very little alteration.

1. *Origin and Progress of Poor Rate.*

By 57 Geo. III. c. 34, intituled, "An Act to authorize the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund to a limited amount, for the carrying on of Public Works and Fisheries in the United Kingdom, and Employment of the Poor of Great Britain in manner therein mentioned." (a) See also Appendix.

Advances of money, &c. under 57 G. 3, c. 34.

Sect. 29. "It is enacted that no such exchequer bills shall be advanced in aid of any parish in Great Britain unless the application for such advance shall be made with the consent of *not less than the majority in number*, and of *three-fourth parts in value*, such value to be calculated and ascertained from the last rate made for the relief of the poor in such parish, of the persons assessed to and paying such rates; or where the poor rates of any parish shall be under the care and management of any select vestry or commissioners, governors of the poor, trustees, or other select body, then with the consent of *not less than four-fifths* of such select body, by whatever name the same may be called; such consent to be certified by some justice of the peace or magistrate acting as such in each parish, and one or more of the overseers of the poor of the parish or place in respect of which the application shall be made."

Advance not to be made to parishes, unless application made with consent of majority in number, and three-fourths in value, of persons paying poor rates; or, where there is a select vestry, &c. then with consent of four fifths of that body.

Sect. 35 enacts, "that the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners for the execution of this act in Great Britain, under the authority of this act, shall be repaid, without deduction or abatement, together with interest for the same, by instalments; that is to say, the principal sum in each and every exchequer bill shall be repaid to the cashier or cashiers of the Bank of England at their office, together with interest for the same at and after the rate of five pounds *per centum per annum*, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act, such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof."

Principal sums of exchequer bills with interest to be repaid by instalments.

By 53 Geo. III. c. 124, s. 5, it is enacted, "that no advance shall be made under the provisions of 57 Geo. III. c. 34, for the use of any parish, township, or place in Great Britain, in which the amount of the money actually expended for the relief of the poor, in the year ending at Easter, 1817, or ending at the usual quarter-day immediately preceding Easter, 1817, shall not exceed by three-fourths the average annual amount of the money expended for the relief of the poor for the three years preceding Easter, 1816, or shall not exceed by one-half the amount so expended for the year ending Easter, 1816, anything in the said act of 57 Geo. III. c. 34, to the contrary in anywise notwithstanding."

Regulating advances to parishes.

Sect. 6 enacts, "that the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners for the execution of this act in Great Britain, under the authority of the recited act (57 Geo. III. c. 34), the payment whereof shall not be otherwise provided for pursuant to the said recited act, shall be repaid without deduction or abatement, together with interest for the same at and after the rate of five pounds *per centum per*

Repayment of exchequer bills.

(a) The overseer cannot *borrow money* for the general relief of the poor, but with a view to their better employment, the providing a workhouse for them, and encouraging emigration. The legislature has authorized the loan by various statutes. See sect. 62, 63, of 4 & 5 Will IV. c. 76, Appendix.

2. Who to make Rate.

Commissioners under recited acts, when directed by the treasury, to advance money towards carrying into execution any act for completing works of general importance and utility.

Interest not to be less than the current rate payable on exchequer bills.

43 Eliz. c. 2, as to making a rate.

Who to be taxed towards relief of poor, and a convenient stock shall be provided to set the poor on work, &c.

annum, to the cashier or cashiers of the Bank of England, at their office, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act; such interest to be computed on the said principal sum from the date of such exchequer bill to the time of payment thereof."

By 1 Geo. IV. c. 60, and 3 Geo. IV. c. 86, the 57 Geo. III. c. 34, and c. 124, are continued and amended; and by 5 Geo. IV. c. 77, after reciting the above acts, it is enacted, "that it shall be lawful for the commissioners for the time being for the execution of 57 Geo. III. c. 34, and of the several other acts hereinbefore recited, whenever the said commissioners shall be directed so to do by any warrant under the hands of any three or more of the said commissioners of the treasury, and the said commissioners are hereby required to advance and lend any sum or sums of money toward the carrying into execution any act of parliament for making, completing, or maintaining any works of general public importance and utility, which shall be carried on under the direction of any commissioners appointed by authority of parliament, on such terms and conditions as shall from time to time be directed by the said commissioners of the treasury or any three or more of them, anything in the said recited acts, or any of them, contained to the contrary in anywise notwithstanding: provided always, that the rate of interest payable on such loan or advance shall not be less than the current rate of interest which shall be payable on exchequer bills at the time of making such loan or advance."

The 43 Eliz. c. 2, (a) s. 1, after enacting that certain persons shall be the churchwardens and overseers of the poor of every parish, it enacts, that they, or the greater part of them, shall take order from time to time, by and with the consent of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, to "raise weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit, a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things as well for the disposing of the said stock, as otherwise concerning the premises, as to them shall seem convenient."

The overseers of townships and vills have the like duty and power, under 13 & 14 Car. II. c. 12, s. 21; and the 43 Eliz. c. 2, s. 8, 9, provides for towns corporate and parishes extending into two counties, &c.

2. Who are to make the Rate.

The Churchwardens and Overseers shall, &c.] It is said by C. J. Holt, that the overseers, with the confirmation of the justices, may order a sum of money to be levied for the relief of the poor, without the concurrence of the parish. (*Tawney's case*, 2 *Ld. Raym.* 1009.) The churchwardens and overseers are required by 43 Eliz. c. 2, s. 1, (*supra*), to make the rate (*Tawney's case*, 2 *Ld. Raym.* 1009; 2 *Salk.* 531); and they may be indicted if they neglect to make such rate. And a *mandamus* will lie to compel overseers to

2. Who are to make the Rate.

Concurrence of the inhabitants not necessary.

Mandamus to compel the making a rate.

(a) The statute of Elizabeth was passed to enforce (what are called) duties of imperfect obligation. For it was a duty before that statute was made to relieve the poor and necessitous. And the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from persons who are deemed competent to pay it. *Per Lord Kenyon*, C. J., 4 *T. R.* 775.

make a rate (*Rex v. Barnstaple*, 1 Barnard. 137; 1 Bott, 78; *Lidleston v. Exeter*, 1 Bott, 77; *Rex v. Weobly*, 1 Bott, 112); and the rule for a *mandamus* to make a poor rate is peremptory in the first instance, for otherwise the poor might starve (*Rex v. Fisher, Sayer*, 160); but not to make an equal rate, or to insert or omit any person or property, because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. (*Rex v. Barnstaple*, 1 Barnard. 137; 1 Bott, 78; 2 Stra. 1259.) And the overseers cannot charge for the employment of a person to make a rate, although such employment was authorized by a parish vestry. (*Rex v. Gwyer*, 4 Nev. & M. 158; 2 Adol. & Ell. 210.)

3. For what Purposes.

But not the making of an equal rate.

3. For what Purposes. (a)

3. For what purposes.

There are many purposes for which a poor rate may be made in addition to those mentioned in 43 Eliz. c. 2.(a) That statute provides for setting to work the children of those poor whose parents are not able to keep and maintain them: also, all persons, married and unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by; and for the putting out poor children apprentices.

It may now be *professedly* made for the express purpose of building a workhouse, employing the poor, paying officers, and repaying money borrowed for the purposes of the act, or for the emigration of paupers. See 4 & 5 Will. IV. c. 76.

The 59 Geo. III. c. 12, gave power to build poorhouses; and, of course, impliedly gave power to defray the expense.

The 18 Geo. III. c. 19, relates to re-payment to constables of the money expended by them in the relief and removal of poor persons, and of vagrants.

Rex v. Essex, 4 T. R. 595. It was said, *per Ashhurst, J.*, to have been the constant practice to allow the expenses of litigating the questions of settlement consequent upon the removal of paupers, to be defrayed out of the parish stock; the legality of which had never been disputed. (b)

Relief and removal of paupers and vagrants. Expenses of litigating questions of settlement.

Tawney's case, 2 Salk. 531; 2 Ld. Raym. 1009. *Tawney*, being overseer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the justices before the end of the year; by which means he lost the opportunity of making a rate to reimburse himself. Upon this he applied for a *mandamus* to the overseers to make a rate to reimburse him.—By *Holt, C. J.* “We cannot order the parish or overseers by a *mandamus* to make a rate to reimburse an overseer, but only to raise money for the relief of the poor; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he have it: if he do, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he need not have done it. He hath not pursued the means the statute gave him, and we cannot relieve him.”—And by the whole court. The *mandamus* lies not.

After overseers are out of office, a rate cannot be made to reimburse money laid out by them whilst in office, but an overseer may make a new rate for the relief of the poor, and out of that retain to pay himself.

Rex v. Goodcheap, 6 T. R. 159. A person appointed an overseer for four successive years, did not make any rate in the three first years to reimburse himself what he expended in those three years, he cannot in the fourth year make a rate for that purpose: and Lord *Kenyon* said, “It was impossible to

An overseer for several successive years, cannot, in the last year, make a rate to reimburse himself for the preceding years.

(a) As to reimbursing overseers see more particularly 22 Geo. III. c. 83, s. 20; 42 Geo. III. c. 74; 43 Geo. III. c. 110, s. 1, 2; 59 Geo. III. c. 12, s. 8 to 16; 36 Geo. III. c. 10, s. 1; and 52 Geo. III. c. 73. See further, *post*, as to *Overseers' Accounts*.

(b) *Quere*. Whether the expenses of a valuation of the property of a parish which has been directed by a majority of the vestry, can be legally defrayed out

of the poor rate? (See 1 Nol. P. L. 67, note 3.)

Semble, that if a select vestry so order under 59 Geo. III. c. 12, the expense may be defrayed out of poor rate. (*Rex v. Micklefield*, 1 Bott, P. L. 113.) A church rate to reimburse churchwarden is bad. (1 Burn, J., tit. “Churchwardens.”) So as to a county rate. (1 Burn, J., tit. “County Rate,” and see *post*, 106, note (a).)

3. *For what Purposes.*

But now succeeding churchwardens and overseers are empowered to repay money expended by preceding churchwardens, &c. for the maintenance of the poor, while there was no rate: or during an appeal: and in default of such repayment, the quarter sessions, on application being made to them, shall make an order for payment.

Notice.

Order.

Distress, &c.

Rate cannot be made to repay money borrowed though for building or repairing workhouses.

Title of rate material.

Overseers not entitled to remuneration for services.

If the title is legal, the intention to misapply the money is no ground for quashing rate.

raise any doubt upon the question. Overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed."

But now by 41 Geo. III. U. K. c. 23, s. 9, after reciting that "whereas it may have happened that the churchwardens and overseers of the poor have not been able to collect a sum sufficient for the relief and maintenance of the poor, but they or the guardians of the poor have advanced and expended considerable sums for that purpose;" it is enacted, "that the churchwardens and overseers, or any of them, out of any money they shall collect in pursuance of any rate for the relief of the poor, may reimburse the preceding churchwardens and overseers or guardians such sums as *they* or any of them *have* heretofore advanced or expended for the relief or maintenance of the poor of such place, *during the time that no rate or assessment for the relief thereof has been made, or during the time that any appeal has been depending which affected the whole of such rate or assessment*, or upon hearing of which the whole might be quashed; and, in default of payment of such money so advanced and expended within fourteen days next after demand in writing, such preceding churchwardens and overseers or guardians, or any of them, may apply to the then next general or quarter sessions, giving due notice in writing of such application to the then churchwardens and overseers, or any two of them; and such court shall examine the parties and witnesses upon oath, and shall make an order upon the then churchwardens and overseers, or any of them, out of the money collected or to be collected by them, or any of them, in pursuance of any rate made for the relief of the poor, to pay such sum to the preceding churchwardens and overseers or guardians, or any of them, as the said court shall think fit: and such sums so ordered to be paid may be levied by distress, and by all such other ways and means as the poor rate may."

Rex v. Wavell, Dougl. 116. The rate was removed by *certiorari*, and the title was an assessment on the occupiers of lands and houses in the parish of Effingham, for the necessary relief of the poor, and *towards payment of money borrowed for building and repairing the workhouse*.—

Willes, J. "Can we reject, as a surplusage, what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney's case*, (*ante*, p. 105,) is in point. And as to an appeal against the overseers' accounts, is a parishioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported." *Buller, J.* "This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's case* goes that length; for it is not confined to the *mandamus*." The rule for quashing was made absolute. (a) (See *Rex Mayor of Gloucester*, 5 T. R. 346.)

In *Rex v. Glyde*, 2 M. & Sel. 323, Lord Ellenborough, C. J. said, "We have no doubt on the face of the order, that the overseer has no title to a salary for any meritorious services, or for any services at all."

Nor can he be remunerated even by resolutions of vestry for making a poor rate, or making divisions of the same, or copies for the collectors, or for payments to an accountant, or for making lists of defaulters, or for collecting the rates, though he employed another to do so under the authority of a vestry resolution. (*Rex v. Gwyer*, 4 Nev. & M. 158; 2 Adol. & Ell. 216.)

But where a local statute gave the overseers power to make a rate (*inter alia*) for the reasonable expenses of the overseers in the execution of their duty, a rate, purporting to be a rate "for raising the sum of 80*l.* as necessary to defray the reasonable expenses which they now, or hereafter may pay," is legal on the face of it, and cannot be quashed; and if the 80*l.* is improperly

(a) This principle also prevails as to church rates, although the money to be reimbursed may have been laid out under an order of vestry. (See *Lanchester v. Thompson, et al.* 5 Madd. 64; *Lanchester v. Tricker*, 8 J. B. Moore, 20; 1 Bing. 201, S. C.; *Lanchester v. Frewer*, 2 J. B. Moore, 688; 2 Bing. 361, S. C.)

expended, then the appeal must be against the overseers' accounts. (*Rex v. Mayor of Gloucester*, 5 T. R. 346.)

Rex v. Bird, 2 B. & A. 522. The expenses, which are to be allowed a constable out of the parish rates, are those necessarily incurred by him on behalf of the parish, as relieving or conveying vagrants, &c. within 18 Geo. III. c. 19, s. 4: but the expenses of indicting a party for assaulting him in the execution of his duty, are not expenses so incurred, although the prosecution was directed by a magistrate. (See also *Rex v. Seville*, 5 B. & Ald. 180; *ante*, Vol. I. title *Constable*, s. 7.)

It has sometimes been the practice of coroners to require the *overseers* of the poor, in that character, and out of the poor rates, to prosecute parties charged with murder or manslaughter; but there is no legal ground on which that power has been assumed.—*Editor*.

The enactment in 59 Geo. III. c. 12, s. 7, as to appointing an *assistant* overseer with a salary will be elsewhere considered.

The enactments relative to labour rates in 2 & 3 Will. IV. c. 96, and to lighting and watching rates, 11 Geo. IV. c. 27, s. 25, will be elsewhere considered.

3. *For what Purposes.*

Expenses of indictment for assault on constable, not allowable out of poor rate.

4. *For what Time a Poor Rate may be made.*

"*Raise weekly or otherwise.*" *Durrant v. Boyes*, 6 T. R. 580. A poor rate may be made prospectively; and if it were made for six months, it would not (it seems) be bad on that account. Lord *Kenyon*, C. J. said, "Every person who is conversant in matters of this kind, knows the impossibility of foreseeing and providing for every expense that may arise: and therefore a rate may be made prospectively, not indeed wantonly, but such as is adapted to the probable exigencies of the parish."

Rex v. Audley, 2 Salk. 526; 1 Bott, 110, 272. A rate was agreed on in 1665, by the inhabitants of *Audley*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt*, C. J. "The old rate, however just at first, may be unequal now; and therefore the justices cannot make a standing rate."

As to the *amount* of the rate, that in general must depend on the necessities of the poor; but by some local acts it was the practice to limit it to a specific sum. (a)

4. *For what Time a Poor Rate may be made.*

Rate may be prospective.

A standing rate cannot be made by the justices.

(a) The 36 Geo. III. c. 10, s. 1, recites, "that of late several acts have been made for the better relief of the poor in particular incorporated districts; and that certain persons are therein appointed to assess the poor's rates in such places, but the money so to be raised is limited not to exceed a certain sum in one year; and that by reason of the late increase of the price of corn and other necessary articles of life, the amount of the assessments so limited are insufficient, and the expense of maintaining the poor since 1st January, 1795, had exceeded the whole amount of the rates which could be raised in the present year, whereby debts have been incurred, so that it is become necessary that the sums to be assessed should be enlarged;" and then enacts "that it shall and may be lawful for the directors and acting guardians of the poor within any hundred, town, or district, in that part of Great Britain called England, incorporated by any act of parliament for the relief or mainte-

nance and employment of the poor, or for any other persons, by whatsoever name they are called or described, to whom is given, by any such incorporating act, the power of appointing the sum or sums to be assessed on the several parishes, hamlets, or places within their respective hundreds, towns, or districts, for the maintenance of the poor, and other the purposes of such act, at any of their annual, quarterly, or other general meetings, whenever the average price of wheat at the corn market in Mark Lane, London, for the quarter immediately preceding such annual, quarterly, or other general meeting, shall have exceeded the average price of wheat at the same market during those years from which the average amount of the poor's rates was taken upon the passing of the several incorporating acts respectively, to assess the several parishes, hamlets, and places within their respective hundreds, towns, or districts, which now are or usually have been charged to the poor's rates, in

5. *On whom the Rate to be made.*5. *On whom the Rate to be made. (a)*

“By taxation of every inhabitant, parson, vicar, and other, and of every occupier (a) of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish.”

such respective sums of money as the said directors and acting guardians, or such other persons as aforesaid, shall think necessary for defraying the expenses attending the support and maintenance of the poor for the current quarter, and for paying the interest of the money borrowed and due by virtue of the said respective acts, and of any debts which may have been incurred since the first day of January, one thousand seven hundred and ninety-five, in the maintenance of the poor, and for other the purposes of the said acts, notwithstanding such sums of money so to be assessed should exceed the amount of the assessments limited by such respective acts of parliament to be assessed on the respective parishes, hamlets, and places within such incorporated hundreds, towns, or districts, in any one year: provided always, that the sums to be assessed, and the assessments to be made by virtue of this act, in each respective incorporated hundred, town, or district, shall be assessed, made, collected, and paid in the same manner, and subject to the same restrictions, regulations, limitations, and powers of appeal, and with the like powers and remedies for compelling payment thereof, as the sums to be assessed, and the assessments to be made, by virtue of the several incorporating acts, are by those respective acts directed to be assessed, collected, and made, within the several hundreds, towns, and districts respectively incorporated by those acts: provided also, that the sums to be assessed by virtue of this act, upon any parish, hamlet, or place, shall be in the same rates and proportions as the assessments which have hitherto been made and levied by virtue of the said act or acts incorporating the several hundreds, towns, or districts in which such parishes, hamlets, or places are respectively situated: and provided also, that, from and after the first day of January, one thousand seven hundred and ninety-eight, the sums to be assessed, by virtue of this act, on any parish, hamlet, or place, shall never exceed, in any one year, the amount of double the sum at present raised by virtue of any incorporating act now existing.”

The 52 Geo. III. c. 73, enacts “that so much of 36 Geo. III. c. 10, as limits or provides, that from and after the first day of January one thousand seven hundred and ninety-eight, the sums to be

assessed by virtue thereof in any parish, hamlet, or place, shall never exceed, in any one year, double the sum then raised by virtue of any incorporating act then existing, shall be and is hereby repealed.”

(a) On principle, it would seem, that every person ought to be compelled to contribute to the relief of the poor, in proportion to his actual annual income or profits, and not merely in respect of his visible tangible property or expenditure; and the principle of the income tax might well be extended to the relief of the poor; whereas a person whose property is in the funds, or in a mine, may, if he be content to reside in a lodging, wholly avoid paying any sum towards the relief of the poor. (See Burroughs’ argument in *Rex v. Andover*, Cowp. 550, post, 114, 115.) The poor rate is a personal charge and not a charge merely upon the land, (*Theed v. Starkie*, 8 Mod. 314; *Case v. Stephens*, Fitzg. 207; and see *Rex v. Butler*, Caldecot, 93.)

The liability to the poor rate is divisible into two principal heads; first, that of *inhabitancy*, as connected with certain property; second, that of the *occupation of property*, independently of the question of *inhabitancy*. The cases upon the first of these heads may be subdivided into those which relate to the character of *inhabitancy*, and those which relate to *property*; in respect of which, inhabitants, as such, may be chargeable. See a long note in *Evans’s Coll. Stat.* 8th vol. 21. The word *inhabitant* means a person *resident permanently and sleeping in the parish*. (*Rex v. Nicholson*, 12 East, 330.) And therefore a person who is lessee of a stall in a market, and comes there on market-days to sell his wares, is not rateable (*Holledge’s Case*, 1 Bott, 123), unless also resident in the parish. And he must have local visible property within the parish; and he shall not be rated in that parish by reason of any property he may have out of it. (*Sir Anthony Earby’s Case*, 1 Bott, 124.)

He is not rateable by reason of money he has out at interest, or in the public funds (*Rex v. White and others*, 4 T. R. 771; 1 Bott, 89, 202; *Rex v. St. John’s Maddermarket*, 6 East, 182; 1 Bott, 239); or by reason of his salary as clerk, or pay as an officer in the navy, &c. (*Rex v. Shalfleet*, 4 Burr. 2011; 1 Bott, 133; *Rex v. White and others*, *supra*); or in respect of the profits of his profes-

The statute gives a power "to rate in such a sum as they shall think fit." This does not import that they have a power to rate arbitrarily, but to rate the occupier according to the value of his occupation, and *inhabitant* according to his *visible personal property*. *Tindal, C. J. 9 Bing. 595.*

The words "*inhabitant, parson, vicar, and other,*" include all those who possess property not coming within the several species of it described in the next following part of the same clause of the act. (a)

5. On whom the Rate to be made.

Who an inhabitant.

sion of attorney (*Rex v. Startifant, 7 T. R. 60; 1 Bott, 217*); nor for household furniture merely. (*Rex v. White, 4 T. R. 771.*)

By special custom, however, every inhabitant in a parish may be rated in respect of his supposed general ability to contribute to the relief of the poor, and without reference to any property whether in or out of the parish (*Nightingale v. Marshall, 2 Barn. & Cress. 318; 3 Dowl. & Ryl. 549*); and the editor submits that this was the intention of the legislature, see post, 115.

And he may by custom be rateable for his stock in trade within the parish, of which he makes a profit (*per Lord Ellenborough, C. J., in Rex v. Macdonald, 12 East, 324; Bott, cont. 75*), whether there be a custom in the parish to that effect (*Rex v. Hill, Cowp. 613*) or not. (*Rex v. Ambleside, 16 East, 380*; see also *Rex v. Andover, Cowp. 550; 1 Bott, 153; Rex v. Whitney, 5 Burr. 2634; 1 Bott, 141; Rex v. Ringwood, Cowp. 326; 1 Bott, 148; Rex v. Dursley, 6 T. R. 513; 1 Bott, 210, 290; Rex v. Sherborne, 8 East, 537; Bott, cont. 67.*) But a farmer is not liable to be rated by reason of his farming stock, because the annual profits of the land being rated, the profits of the stock have already been assessed in those of the land. (*Reg. v. Barking, 2 Ld. Raym. 1280; 1 Nolan, 84, 204; 1 Bott, 126.*) So a shipowner is liable to be rated for a ship of which he makes profit, if its principal port be within the parish, (*Rex v. Jones, 8 East, 451. See Rex v. Liverpool, 8 East, 455, n.; Rex v. Collison, 8 East, 455, n.,*) whether such ship be within the parish at the time of making the rate (*Rex v. Howard, 8 East, 455, n.*) or not. (*Rex v. Shepherd, 1 B. & Ald. 109.*)

A rate on a foreign ambassador cannot be levied by distress, 7 Anne, c. 12; nor can any of his suit be rated, if they be clearly within the meaning of the stat. 7 Anne, c. 12. (But see *Novello v. Toogood, 2 D. & R. 833; 1 B. & C. 554, S.C.*)

Every occupier, &c. The tenant, and not the landlord, is the occupier within the meaning of the statute. (*Rex v. Welbank, 4 M. & Sel. 229; Rex v. Parrott and others, 5 T. R. 593; 1 Bott, 202. Case v. Stephens, Fitzg. 207.*) But where the owner occupies by his servants, or agent, he is rateable (*Rex v. St. Mary,*

Durham, 4 T. R. 477; 1 Bott, 120; Rex v. Aberystwith, 10 East, 354), but a person occupying merely as servant, is not to be rated. (*Rex v. Terrott, 3 East, 506; 1 Bott, 230; Rex v. Woodward, 5 T. R. 79; 1 Bott, 205.*) Corporations may be rated whether they occupy by themselves or servants. (*Rex v. Gardner, 1 Bott, 143; Rex v. Mayor, &c. of Sudbury, 2 D. & R. 651; 1 B. & C. 389, S.C.*)

It must be a beneficial occupancy. (See *Rex v. Sculcoates, 12 East, 40; Bott, cont. 72; Rex v. Salter's-Load Sluice, 4 T. R. 730; 1 Bott, 201.*) Thus the person who erects, or the trustees of, an hospital, almshouse, or other charitable institution, are not rateable for it (*Rex v. St. Bartholomew's, 4 Burr. 2435; 1 Bott, 139; Rex v. Waldo, Cald. 358; 1 Bott, 166; St. Luke's Hospital Case, 2 Burr. 1053; 1 Bott, 132*), nor are the persons who reside in it merely as servants. (See *Rex v. Woodward, 5 T. R. 79; 1 Bott, 205; Rex v. Terrott, 3 East, 506; 1 Bott, 230.*) But an officer of such an institution is rateable, by reason of rooms appropriated separately to his own use. (*Ayre v. Smallpiece, 1 Bott, 131; Rex v. Catt, 6 T. R. 332; 1 Bott, 213; and see — v. Armstrong, 2 Stark. 543.*) And persons occupying it, if their occupation be beneficial (*Rex v. Munday, 1 East, 584; 1 Bott, 223*); and lands given to such an institution, and from which it derives a profit, are rateable. (*1 Bott, 125; 2 Salk. 527; and see 48 Geo. III. c. 96, s. 26.*) The trustees of a chapel or meeting-house are not rateable, if no pecuniary advantage be made therefrom (*Rex v. Woodward, 5 T. R. 79; 1 Bott, 205*); but if a pecuniary advantage be made by letting out the pews (*Robson v. Hyde, Cald. 310; 1 Bott, 164*), although it be expended in paying the clergyman's salary, rent, &c. (*Rex v. Agar, 14 East, 256; Bott, cont. 88*), it is liable to be rated.

Pipes in the ground for the conveyance of gas to light a town, is a rateable occupation of land within this act, and the occupiers are rateable to the extent of the increased value of the land so used. (*Rex v. Brighton Gas Co., 8 D. & R. 308; 5 B. & C. 466, S.C. Post, 137.*)

(a) Parson, Vicar, and other. The

5. *On whom the Rate to be made.*

WHO ARE RATEABLE AS INHABITANTS.

Inhabitant not to be rated for estate in another parish. Lodger or stall-keeper as regards church rates.

"Inhabitant" in this statute means "resiant."

Sir Anthony Earby's case, 2 *Bulstr.* 354. No inhabitant is to be taxed by a parish in regard of any estate he hath *elsewhere*, but only in regard of the *visible estate* he hath in the town where he doth dwell.

Holledge's case, 2 *Roll. Rep.* 238. The lessee of a stall in a market town, who came there weekly to the market to sell his wares, was not rateable to the repairs of the church; and that if a man take up his lodging for a week in a town, he shall not be so charged or to such like taxes.

Rex v. The Inhabitants of North Curry, 4 *Barn. & Cres.* 953; 7 *D. & R.* 424. The appellants were partners in trade, all residing in the parish of *Langport*, and carried on a considerable branch of their business in coals, culm, deals, and salt, in *North Curry*, by means of a foreman and other servants. The foreman and his family resided there in a house on part of the premises on which the trade was carried on, belonging to the appellants, for which they were assessed, as proprietors and occupiers, in the rate appealed against, at 1*l.* 2*s.*, and they were also assessed for stock in trade 16*l.* 13*s.* 4*d.* Neither of the appellants ever slept in the parish of *North Curry*, but they came there for the purpose of inspecting the foreman's accounts, and to see how the business was going on. On such occasions the acting partner used a small parlour in the foreman's house as a counting-room, which the foreman, in the absence of the appellants, used when he had company. There were no sleeping conveniences kept for the appellants in the foreman's house, nor in any other part of the parish. The stock was received and sold by the foreman on the premises, and on every *Friday* the proceeds, with the accounts of the week, were sent to the partners at *Langport*, and returned, after inspection by them, to the foreman on the succeeding *Monday*. Accounts were also made up monthly, and sent to the partners for their inspection. The amount of the rate was one ground of appeal stated in the notice; but on the hearing of the appeal, that was abandoned, and the ground stated and relied upon was, that the appellants were not liable to be rated for their stock in trade, they not being inhabitants of the parish of *North Curry*, nor otherwise liable for the same. The assessment on the wharfs, houses, &c. was submitted to without objection. *Bayley, J.* "If the question raised in this case were *res integra*, the argument addressed to us would deserve great consideration. But there have been cases in which it has been held that a party (not being a parson or vicar,) to be rateable to the relief of the poor must either be an inhabitant or occupier of lands within the parish; and I need hardly observe, that in this branch of the law certainty is very desirable. If the appellants in this case were liable to be rated, it must be because they come within the description of the persons upon whom the liability is imposed by the statute 43 *Eliz. c. 2.* It has been insisted, that *Stuckey* and his partners are persons liable to be rated either as inhabitants or as persons coming within the meaning of the

parson and vicar of the parish, whether they reside in the parish or not, are liable to be rated by reason of their tithes in the parish (*Rex v. Turner*, 1 *Stra.* 77; 1 *Bott*, 126), although they let the tithes to their parishioners respectively (16 *Vin. Abr.* 427); they are liable also with respect to oblations and other offerings (*per Lord Kenyon, C. J.*, in *Rex v. Carlyon*, 3 *T. R.* 385; 1 *Bott*, 186); they are liable also to be rated for other property in their possession or occupation, in precisely the same manner as other persons. But if they by *deed* let the tithes to a tithe farmer, the farmer only shall be rated for them. (*Rex v.*

Lambeth, 1 *Stra.* 525; 1 *Bott*, 127. See 3 *B. & C.* 863; 5 *D. & R.* 675; 4 *B. & C.* 467; 6 *D. & R.* 557; 5 *B. & C.* 702; 8 *D. & R.* 457; 4 *Dowl. & Ryl. Mag. Ca.* 101; 1 *Nolan*, 144, 145. See *post*, 155.

By an inclosure act it was provided that a certain corn rent, "free from all taxes and deductions whatsoever, except land tax," should be issuing out of the lands to be inclosed, and other lands in the parish, and to be paid to the rector, in lieu of all great and small tithes, &c.; and it was held that this corn rent was not liable to be assessed to the relief of the poor. (*Mitchell v. Fordham*, 6 *B. & C.* 274; 9 *D. & R.* 335.)

words 'and other.' In the numerous cases, however, which have come before the courts on the rateability of tolls, it has never been suggested that persons not coming within the description of the words 'inhabitants or occupiers' were liable to be rated under the words 'and other.' In *Rex v. Nicholson*, (12 East, 342,) Lord *Ellenborough*, after stating the words of the act, says 'that tolls do not come within any one description of occupancy described by the statute, they are not lands nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an inhabitant of the parish out of which they arise.' Lord *Ellenborough*, therefore, must have considered the words 'and other,' not to have carried the description of the persons liable to be rated further than the word 'inhabitants' did, assuming that to be the true construction of the statute; then the question in this case is, whether *Stuckey* and his partners were inhabitants within the meaning of the statute. That word may have a very extensive sense, so as to include in it all persons possessed of property in the place. Such a construction has been put upon that word in the statute of bridges, the riot act, and the black act; but in those statutes the word 'inhabitants' was the only word used as descriptive of the persons liable to be charged. From the nature of the subject-matter to which it was applied, it was considered as necessarily including in it all persons having property in the place to be taxed. It has been held, accordingly, that a person occupying land in a parish, but living out of it, is compellable to receive a parish apprentice, although the statute of 43 Eliz. c. 2, says that none but inhabitants and occupiers shall be bound to receive the same. But in this statute several words are used as description of the persons to be taxed, viz. 'every inhabitant, parson, vicar, and other, and every occupier of lands.' In *Rex v. Nicholson*, (12 East, 342,) the court were of opinion that the word 'inhabitant' was not to be taken in the extensive sense which had been applied to it in the construction of the statute of bridges, but in a confined sense, as descriptive only of a resident within the parish." *Le Blanc*, J. said, "That the word 'inhabitant' was used as well as occupiers, and that he considered that by the former was meant a person who was resident in the place, for one might occupy without being resident, and the statute meant to include both. It is also stated in *Nolan's Poor Laws*, 3d edit. 72, that personal property cannot be rated unless the proprietor reside in the parish. Then the question is, what is the meaning of the word 'resides?' I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep; and if that be so, there is no ground for saying that *Stuckey* or his partners had a residence in the place in question. I think that according to the former decisions, the word 'inhabitants' in the 43 Eliz. c. 2, must be confined to residents; and therefore, inasmuch as the appellants were not residents within the parish, they were not liable to be rated in respect of their personal property." *Holroyd*, J. "It seems to me, that consistently with the construction put upon the words of the statute of the 43 Eliz. c. 2, in several cases we must hold that the appellants in the court below were not rateable. If that construction had not already been put upon the statute, the argument in favor of the rate would be entitled to attention; but without overturning the cases where it has been held that a non-resident proprietor of tolls is not rateable, we cannot hold that the parties mentioned in this case are rateable either as coming within the word 'inhabitants' or the words 'and other.' It seems to me that the latter words must mean 'other inhabitants.' The legislature never could intend to rate persons who were neither inhabitants nor occupiers of property within the parish; and unless inhabitants means inhabitant resident, the subsequent word 'occupier' will have no effect whatever. On that ground, in *Rex v. Nicholson*, it was held that a party was not liable to be rated for tolls unless he was an inhabitant resident. In the course of the argument, Lord *Ellenborough* says, 'The great difficulty is to bring the case within the words of the statute 43 Eliz. c. 2, conferring the authority. The party rated must be either an inhabitant of the parish, or he must be an occupier of one or other of the descriptions of property mentioned in the statute.'

5. *On whom the Rate to be made.*

5. *On whom the Rate to be made.*

And in another place he asks 'whether the counsel were aware of any case where the word *inhabitant* in the statute of Elizabeth had been held to mean any other than *resident*?' And afterwards in giving judgment, Lord *Ellenborough* says expressly that there is no case in which the word '*inhabitant*' in that statute has been held to mean any other than a resident within the parish. *Le Blanc*, J. also seems to have considered it clearly necessary that a party must be either a resident in the place, or an occupier of real property, in order to make him rateable; and *Bayley*, J. says, 'In a statute which mentions *inhabitant* as well as *occupier*, *inhabitant* must meant *resident*, otherwise it would mean the same as *occupier*.' In *Williams v. Jones*, (12 *East*, 346,) it was held, on the same grounds, that a non-resident proprietor was not rateable for tolls of a ferry. The construction which it is contended ought to be put upon the words 'and other,' would have applied to those cases as well as to this; and if that be the right construction, these cases have been improperly decided. I think that according to the construction already put upon this statute, the words 'and other' in this clause of the statute must mean 'and other inhabitants,' and that being so, then, for the reasons already given, *Stuckey* and his partners were not rateable." Order of sessions confirmed.

See *ante*, 20, 21, *Rex v. Poynder*, and *Rex v. Adlard*, as to the meaning of the word "*inhabitant*," when a personal trust and when a pecuniary charge is intended.

Inhabitants may be rateable in respect of their local visible personal property in the parish, or apparent means, even to be collected from the ordinary scale of expenditure, as for their stock in trade and ships, but not for salaries, household furniture, money, or profits of personal labour. Nor in general is the former rated; and it is only by *custom* or *usage* that a rate in respect of personal property is in general made. As to custom or usage, see *Nightingale v. Marshall*, 2 *Bar. & Cres.* 318; 3 *Dow. & Ry.* 549, S. C.

The King v. Fryer, 4 *B. & C.* 961; 7 *D. & R.* 426. An appeal by *W. Fryer*, *J. Gosse*, and *R. Pack*, against a rate made for the parish of *St. James, Poole*, whereby they were assessed for certain ships, for exports and imports, and cooper's stock. *Fryer*, *Gosse*, and *Pack* were partners as merchants, and were interested in equal thirds in the partnership stock and effects, and the vessels belonging thereto. The partnership business was carried on at *Poole* and *Newfoundland*. At *Poole* they had a counting-house and store-houses, and a clerk used the counting-house and kept the key, but did not sleep there. *Fryer* also carried on the business of a banker, with third persons, in the parish of *Winborne Minster*, six miles from *Poole*, and his dwelling-house was at *Winborne*. The banking partnership had also a counting-house and some other rooms and a stable in *Poole*, and a clerk of the banking partnership lived on those premises. The furniture in the rooms belonged to him, but the furniture in the counting-house belonged to the banking firm. None of the partners in the banking firm resided in *Poole*. *Pack* resided at *Newfoundland*. The rate was made upon the whole partnership interest in the exports and imports, in the cooper's stock, and in each of the ships, and not upon the share of *Gosse* only. *Scarlett* said, that the rate being upon the partners in respect of personal property, they were rateable only as inhabitants, and, according to the authorities, it was impossible to contend that two of them were inhabitants, inasmuch as they were not resident within the parish. He said he would not therefore argue the case, and the rate was sent back to be amended, by striking out the names of the appellants.

Rex v. Gosse, 9 *D. & R.* 759; 7 *B. & C.* 60. Where only one of several partners was resident in a parish, held that he could not be rated to the relief of the poor in respect of more than his own share of the partnership personal property. Lord *Tenterden*, C. J. "It is clear that the rate must be amended. By 43 *Eliz.* c. 2, inhabitants are to be rated according to their ability. If this rate were to stand, *Gosse* would be rated according to the ability of himself and others. It is said that there will be difficulty in ascertaining the share to which any partner may be entitled: but where that is the case, the rate may easily be imposed in respect of the whole, and the party may come and dis-

A non resident partner is not rateable, although one of the firm is resident.

A resident partner is rateable for his share only.

charge himself by proving the extent of his interest. Rule absolute for amending the rate.

*Who are
Rateable as In-
habitants.*

Stock in Trade and Ships.

*Stock in trade and
ships.*

Personal estate.

Whatever difficulties in practice may attend a rating of inhabitants in respect of their *personal estate*, it is now settled that an inhabitant is rateable for his (a) stock in trade, of which he makes a profit within the parish, whether there be a custom in the parish to that effect or not; and the principle of some of the following cases is therefore no longer law.

Q. v. Barking, 2 *Ld. Raym.* 1280. Upon quashing several orders made relating to the poor rates, the matter in difference was referred by K. B. to Lord C. J. *Holt*; but the parties, not satisfied with his opinion, signified their consent in writing to submit this question to the opinion of the judges of the K. B. : to wit, whether a *farmer for his stock* shall not be chargeable and taxable to the poor rate, as well as a tradesman for his *stock in trade*? And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of *Holt*, C. J. Whereupon the following rule of court was made: "Upon mature deliberation, it is considered by the court that a farmer is not taxable to the poor rate for his stock; and that a tradesman is taxable for his stock in trade." [Or, as it is expressed in the record, *Quod firmarius, anglicè*, a farmer, *non erit onerabilis et taxabilis ad ratus pauperum pro pecuniis, anglicè*, stock; *et quod artifex, anglicè*, a tradesman, *est onerabilis et taxabilis pro pecuniis, anglicè*, stock, *in arte, anglicè*, trade.

A farmer is not rateable for his stock.

The reason why a farmer is not liable to be rated by reason of his farming stock is, that the annual profits of the land being rated, the profits of the stock have already been assessed in those of the land.

Rex v. Witney, 5 *Burr.* 2634. Upon an appeal against a rate, many manufacturers and traders within the parish of *Witney*, who had been assessed to the *land-tax* for their stock in trade, had never been charged to the *poor rate* for such *stock*. In support of the rate, *Q. v. Barking*, (*supra*), was cited. But the court were not satisfied with the authority of that case. Lord *Mansfield*, C. J., expressly called it a strange case. They observed, that the opinion of three of the judges was only said to be that a farmer for his stock was not taxable, contrary to the opinion of *Holt*, C. J. But it doth not appear that a question was directly put to them, whether a tradesman was taxable to the poor for his stock in trade? The court, however, gave no explicit opinion upon the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade. But here, the order of sessions is clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons and that property which it was thought were illegally omitted. Order quashed.

Stock in trade of tradesmen, &c. rateable.

Rex v. Ringwood, *Cowp.* 326. The sessions quashed a rate, and stated that three persons were possessed as co-partners of stock in the trade of brewers and maltsters, in the parish, to the value of 4000*l.*, for no part of which was any of them assessed; that the partners were inhabitants of the parish. It did not appear that stock in trade had ever before been rated in this parish, therefore they adjudged the rate to be quashed. Lord *Mansfield* said, "I have no doubt what is to be done with it, as the authority of *Rex v. Witney* (*supra*), is precisely in point. I think the justices would not have done very wrong, if they had acquiesced in the practice which has obtained ever since the statute of 43 *Eliz.*, of not rating this species of property. The *Rex v. Witney* was determined upon this single ground, that the justices in session should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here, the justices at sessions should have amended the rate, if they thought this property rateable; and then on attempting to do it, they would have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they

As to rateability of stock in trade.

(a) See *Rex v. Hull Dock Company*, *post*.

Stock in Trade
and Ships.

had tried to amend it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind have, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them." Then, after adverting to some of the cases, his lordship added, "They talk of visible property; what is *visible* property? I do not know what is meant by it. If any visible thing should be determined to come under that description, in that case a lease for years, a watch in a man's pocket, would be rateable. Visible property is something local in the place where a man inhabits; but that does not decide *what a man's personal property is*: consider how many tradesmen depend upon ostensible property only." Order of sessions quashed.

Rex v. Rodd, Cald. 147; 1 *Bott*, 161. *Rodd* was rated in *Bridgewater* four shillings in respect of his *stock in trade*, above what he was charged for his house and shops, and other real property. The sessions confirmed the rate, and stated specially, That within the said borough it had been usual ever since the existence of rates for the relief of the poor to assess the inhabitants of the said borough *for and in respect of their personal property or stock in trade*; and amongst them, such as have been of the same trade and of similar circumstances with the appellant. And it was admitted that it was not possible to distinguish this from *Rex v. Hill*, (*post*, 115.) By the court: rate affirmed.

Personal property is rateable, and the bare possession of it is evidence from which the justices may draw the conclusion, that the possessor is rateable.

Rex v. Dursley, 6 *T. R.* 53. *J. Harris* appealed against a rate for the parish of *Dursley*, upon the ground that Messrs. *Tippots* were not rated for their goods, stock in trade, and personal effects; and the court being of opinion that stock in trade and personal property ought to have been rated quashed the rate. The case stated that "it was not proved that any profit was made from the stock, or that it belonged to them, except from its being in their possession." By Lord *Kenyon*, C. J. "There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared, indeed, in the possession of stock in trade, some to the amount of 100*l.*, others 50*l.*, but the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or, if it did, whether or not it produced profit, or was not liable to incumbrances equal to the value of the property itself. *The bare possession of personal property, is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated*; but here the justices, after stating the possession, have raised a doubt respecting other facts, which they should have enquired into and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. Order of sessions quashed.

The sessions must find that the stock in trade is not only visible property, but productive.

Rex v. Sir A. Macdonald, 12 *East*, 324. One ground of appeal was, that certain stock in trade was not rated. And the case found, as to this point, that the justices were not satisfied from the evidence that there was any sum of surplus by which they could amend the rate. Lord *Ellenborough*, "As to the omission of rating stock in trade. In order to include particular individuals in the rate, a case must be made out in evidence against those individuals; but the justices have found only certain inhabitants were possessed at the time of visible stocks in trade within the township, and were personally liable to be assessed to the poor's rate in respect thereof, if by law such property be liable to be rated. Now visible property in the place, such as stock in trade, merely as being *visible* is not liable to be rated; but to make it rateable, it must be also *productive*: but the parties have found that it was not productive, or, what is the same in effect, that it was not proved to be so to their satisfaction. That finding concludes the question.

If personal estate be rateable, it must be local visible property within the parish.

Rex v. The Overseers of Andover, Cowp. 550. The case was, the overseers made a new rate, in which they omitted to rate tradesmen for their stock which had been formerly rated in that parish. Upon which the other inhabitants of the parish appealed to the sessions. The sessions adjudged, "that Mr. *J. Wakefield* was a proprietor of stock in trade as draper in the parish of

Andover, to the amount of 300*l.*, and that the profits of that trade are 15*l.* a-year; and that he ought to be rated, in respect of such stock and profits, 7*l.* each rate." And there was the like adjudication as to other tradesmen. And the court ordered the rate to be amended, by putting into it a rate on the said several tradesmen in respect of such their stock and profits. It was objected, that this order on the face of it was bad, as it did not appear that the persons whose names were added had notice of the appeal. The court held this to be a fatal objection; and therefore the order of sessions was quashed. Lord Mansfield, C. J., said "It is a very different question, whether personal estate is to be rated to the extent contended for, (a) or not to be rated at all. It would make the poor laws very oppressive, if a man were to be taxed to the extent of his whole personal estate and income. In that case every man who has money in the funds would be liable; lawyers for their fees, soldiers for their pay and the like. But where men are occupiers of houses, and have stock in trade, whether such stock in trade may be taken into consideration, is a very different question. Some personal estates may be rateable. But it must be local visible property within the parish. It would be material to state what has been the custom of rating. If the usage should be to take in stock in trade, there would be a very good right to support it. Let them, therefore, try it on the special circumstances of the case." Mr. J. Aston said, that if upon the general question it should turn out to be the law that personal property is rateable, it must be then rated, though it was never rated before.

Rex v. Hill, Cowp. 613. The appellant *Hill* was a clothier, and an inhabitant of the parish of *Bradford*. He was charged to the poor rate in respect of his stock in trade in the parish. The sessions confirmed the rate. Lord Mansfield, C. J. asked, "What usage heretofore had been in this place with respect to rating stock in trade?" Unto which it was answered, that the usage was waived, and that the counsel at the sessions had agreed to bring the general question before the court. Lord Mansfield said, they had no right to do so, and thought it ought to be sent back to the sessions to state the usage. Afterwards, the case being sent back, and the sessions returning, that it had been the usage heretofore in the parish of *Bradford* to rate persons for their stock in trade, the court ordered the rate to stand.

Rex v. Darlington, 6 T. R. 468. *G. Allan* appealed because seven persons were not rated for their stock in trade. The sessions quashed the rate, and stated, that it did not appear whether stock in trade had or had not been rated in *D.* prior to 1745; from 1746 to 1752, and again from 1788 to 1794 it had been rated; in August, 1794, a rate was made, which continued in force the remainder of the year, which was not appealed against, in which the above seven persons were rated for their stock in trade as yielding certain profits (stating them), and which the appellants contended was an admission that to that time those seven persons possessed stock in trade producing the profits there stated. This rate was paid by some of the traders, but not by others; to enforce payment from whom no step had been taken. The appellants then proved that those seven persons, when the rate was made in January, 1795, kept shops in *Darlington*, and that each possessed a visible stock in trade there, and appeared to carry on business to the same extent as in 1794. The circumstances of the ability of those seven persons, or that they respectively made profit of their stock in trade, or that it was exclusive of their debts, or that it was a clear residue after debts paid, did not appear otherwise than as above stated. Lord Kenyon, C. J. "The case of *Rex v. Dursley* (*ante*, 114,) (b) has been particularly pressed upon us as a decision of our own; but the present case is clearly distinguishable from that. There the sessions had forbore to draw any conclusion from the facts proved before them, and left a mass of evidence for our consideration, but so incomplete, that we could not say upon the facts stated

Stock in Trade and Ships.

The sessions cannot add to a rate the names of those who have not notice of the appeal, or do not litigate the question at the sessions.

Usage.

Stock in trade may be rated.

The Court will not alter the conclusion drawn by the sessions from the evidence stated.

(a) Mr. Burrough contended that every inhabitant was rateable according to his actual ability, and in a most learned and elaborate argument reviewed the whole

common and statute law on the subject of the early relief of the poor.

(b) And see *post*, 133, 134.

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whether the parties ought or ought not to have been rated; whereas here the justices have drawn the conclusion. They have indeed added, that the stock was not productive 'otherwise than as thereinbefore stated.' What is stated before is, that these persons had large visible stock in trade; that they were rated in the preceding year for that stock; that they submitted to the rate—for whether paid or not at the time is immaterial, no appeal having been made against the rate. Then, these circumstances not having been altered, the question, whether all this was not *prima facie* evidence for the justices to proceed upon,—and whether, as this evidence was not opposed by evidence on the other side, it was not sufficient to enable them to draw the conclusion which they have drawn. Undoubtedly it was strong *prima facie* evidence against the persons rated; and they should have discharged themselves in such a case by evidence. I feel indeed the severity of making persons in trade disclose their circumstances. But this is not a singular case: persons appointed sheriffs in some corporations being sometimes obliged to disclose their situations in order to excuse themselves from serving the office. In this case there was *prima facie* evidence before the justices in support of the rate. It was competent to them to decide on the weight of the evidence; they have decided, and we cannot now say that the conclusion they drew was certainly wrong. With regard to the other question, this was a case in which the sessions could not alter the rate, because, by the addition of these seven persons, the proportion of every other person would have been altered, therefore they were bound to quash the rate." The other judges concurred. Order of sessions confirmed.

But a rate may now be amended, see 41 G. III. c. 23, *post*.

Goods sent to be worked are not stock of workmen.

Rex v. Sherborne, 8 East, 537. The appellants were silk throwsters, occupying certain buildings in *Sherborne*, in which persons were employed by them to clean, spin, and throw silk sent them in a raw state from *London*, for that purpose. The silk, after being so improved, was sent back, and they were paid for the process. The rate was imposed in respect of the profits derived from the silk as *stock*. But the Court decided at once that it was impossible "to call the silk the stock in trade of the appellants, who were employed to work it up. It was nothing like stock in the sense in which it had always been understood."

On an appeal against a rate, on the ground that A. is not rated for his stock in trade, the sessions ought to amend the rate, and not quash it. Stock in trade is rateable to the poor, notwithstanding it has never been rated, unless there be some circumstances to take it out of the general rule.

Rex v. Ambleside, 16 East, 380. Appeal against a poor rate, because *W. W.*, and other persons named in the rate, were not assessed in respect of their stock in trade. The rate was made in respect of *real* property only, and no stock in trade or other personal property was included in it. The sessions quashed the rate. The question intended to be submitted was, whether, if stock in trade produce a profit, the usage can vary its rateability?—Lord *Ellenborough*, C. J., said, "Is there not another question, whether the rate ought not to have been amended, instead of being quashed? *As to the rateability of stock in trade, that has been settled in Rex v. Darlington*, 6 T. R. 468 (*ante*, 115), if it be ascertained to be profitable. It is then an objection applicable to one person, and the justices should have amended the rate, and not quashed it. The 41 Geo. III., U. K. c. 23 (*post*), was passed for the very purpose of enabling them so to do, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. We say, therefore, that this rate was not properly quashed, but ought to have been amended. If there are any circumstances to take it out of the general rule, as stated in *Rex v. Darlington*, they should be stated: if there are none such, the property is rateable. *Rex v. White*, 4 T. R. 774 (*infra*), is also to the same effect." Order of sessions quashed.

Ships are stock in trade at their port.

A ship is stock in trade at her principal port (*Rex v. Jones*, 8 East, 451; *Rex v. Liverpool*, 8 East, 455; *Rex v. Collinson*, *ibid.*), whether such ship be within the parish at the time of making the rate or not. (*Rex v. Howard*, 8 East, 455; *Rex v. Shepherd*, 1 B. & A. 109.) See *post*, "Where property rateable."

An inhabitant is not rateable for the profits of a ship, unless the home of the ship is within the parish. (*Rex v. Shepherd*, *post*, "Where property to be rated.")

*What Personal Property not rateable.**What Personal Property, &c. not rateable.*

Stock vested in the public funds not rateable.

Rex v. St. John's, Maddermarket, Norwich, 6 East, 182. The rate was made by virtue of a local statute (10 Anne, c. 6), which enabled the overseers, &c. "to assess a certain sum upon the inhabitants, &c., and on all persons having and using stocks and personal estates in the said parish, or having money out at interest. Money out at interest, as well without as within the said city and county of Norwich, of the respective inhabitants within the same, had been constantly assessed to the poor's rates. The appellant was possessed of money vested in the public funds, or on government security, and then standing in her name in the books of the governor and company of the Bank of England in the 5 per cent. bank annuities. And the question was as to the rateability of this stock. Per Lord Ellenborough, C. J., "Money out at interest, however the lender may stipulate not to call for the principal for a given period, is still a loan of money, with forbearance for a certain time. It implies that the principal is to be repaid at some time or other, when the lender will be entitled to receive it as money, and not a substitute for the principal in a mere annuity. But with respect to stock, the payment of the principal can never be compelled. All that the government engage for is a perpetual annuity, redeemable at their own will and pleasure. Then can we say that stock is 'money out at interest?' Money out at interest must mean that which is capable of being recalled at some time or other; money which may or may not be out at interest, and is only rateable when so used. Is that at all applicable to the funds, where the principal is sunk in an annuity, and cannot be recalled, though in their stock parliament have reserved a power of redemption? If this then be not rateable under the local act, neither is it so under the 43 Eliz. c. 2, (the only other statute by which it could be rateable), not being local visible property within the parish. It is therefore not rateable under either statute." *Lawrence, J.*, "If ability alone were the criterion of rating, all persons would be rateable in respect of their property, whether locally and visibly situated within the parish or not; but it has been determined again and again, that a person can only be rated for local visible property within the parish. The appellant was therefore not rateable under the general law; and for the reasons stated by my brothers, I am of opinion that she was not rateable for her stock as for money out at interest."

Rex v. Shalfleet; Sherrington's case, 4 Burr. 2011. The appellant inhabited a tenement at S. for superintending the saltworks there, for which he received a salary of 40*l.* per ann. from the government, and was rated for this salary. And Lord Mansfield, C. J. said, "We are all of opinion that this is not such a species of property as can be rated to the relief of the poor, as personal estate within the parish." (See *Rex v. White, 4 T. R. 771, ante, 116.*)

In *Rex v. Startifant, 7 T. R. 60*, the defendant was assessed in respect of his profits and fees of his profession as an attorney, according to the same usage which had prevailed since 1732. And the Court, without hearing any argument, said that there was no doubt in the case, and quashed the rate. So *Governor of Lead Co. v. Richardson (post)*. The fees of a physician or lawyer cannot be rated.

Inhabitant not rateable for personal labour, nor for salaries.

Nor for his profits as an attorney.

Rex v. White, 4 T. R. 771. S. White was rated in 13,500*l.* for his personal property, consisting of ships employed in the Newfoundland trade from Poole, and monies vested on real securities on lands lying out of the parish. A. White was assessed for her personal property within the parish in 1000*l.*, such personal property consisting of principal money to that amount. J. Lander was rated for his personal property in 200*l.*: he was collector of the customs at the port of Poole, and had no personal property except his salary payable as collector. T. Langharne was assessed for his personal property in 100*l.*: he was a captain in his majesty's navy, and had no other personal property but his pay, which was paid to his agent in London: he had household goods and furniture in the parish. W. Corben was rated for his personal property in 100*l.*: he was clerk to a merchant, then an inhabitant of the parish, and had no personal property except his pay as clerk, and which he received in the parish. R. Daw was rated for his personal property in 100*l.*: he was

An inhabitant not rateable for money, for salary, for household furniture, but he may be so for ships and stock in trade.

*What Personal
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not rateable.*

master of a merchant-vessel trading from *Poole* to other parts, and had no personal property but his pay, which he earned as such master of a vessel, and which he received in the parish. *W. Stansmore* was rated for his personal property in 300*l.*, such personal property consisting of stock in trade as a shopkeeper. *Lord Kenyon, C. J.*, "This is a question of great difficulty, and of vast importance to the public. The statute of *Elizabeth* was passed to enforce (what are called) duties of imperfect obligation; for it was a duty, before that statute was made to relieve the poor and necessitous; and the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from those persons who are deemed competent to pay it: and in the case in *Bulstrode*, it was said that the rate should be on persons in respect of visible property locally situated within the parish. Then apply that rule to these cases. First, as to the ships: I think that they are rateable; this parish is their home, and must be so considered for the purposes of the register act. (a) With regard to the money lent on real securities, I think that it cannot be rated, for it is stated that the money was lent by persons out of this parish on landed securities elsewhere: this, therefore, is not personal property in the parish, and I am not prepared to obviate the difficulty of such a person residing in two parishes. In the act of parliament which imposes a tax on horses and servants, the legislature have guarded against this difficulty by directing the person liable to the duties to give an account to the collector of the number for which he pays in any other parish; but there is no such provision for this case. I have doubted a great deal in the course of the argument on the case of the person rated for 1000*l.* in specie, but the inclination of my opinion is, that she is rateable for this, because it is stated to be property within the parish, and it may be productive if the owner choose. For the same reason I think that the household furniture is not rateable, because it produces nothing: the party might as well have been taxed for his clothes: for a house, indeed, the occupier must be taxed, because the legislature have said so in express terms. The case of the stock in trade is admitted to be rateable; but the cases of the salaries have been long at rest, those are not the subject of a rate." *Buller, J.*, "I concur with my lord in all the points except that relative to the 1000*l.*, for which I think the owner is not rateable; the reason for which it was admitted that household furniture is not rateable, namely, because it does not produce any profit, must also govern this: it is stated that the owner has it in hard money, and therefore we must take it, upon this state of the case, that it does not produce profit. In the next place, I am of opinion that money is not rateable within this act of parliament. The legislature could not intend that inquiry should be made as to every guinea which a man has in his pocket. If the rate be confined to visible property yielding profit in the parish, there will be no difficulty in adhering to that rule; but it will be dangerous in the extreme to extend it farther, and to look into every man's bureau to see what money he has there. But at all events I think that this person cannot be rated for the reason first given." *Grose, J.*, "I have no difficulty upon the question respecting the ships; they are rateable, like stock in trade. But the party cannot be rated for the money at interest: and as to the 1000*l.* not at interest, I have had great doubts in my mind. But after consideration, I agree with my brother *Buller*, that the legislature did not intend to rate money. The act of parliament has enumerated all the different species of property which should be the subject of a rate, but has omitted money. Besides which, considering how much this statute has been at different times discussed, and that it has never been held that money is rateable under it, I am satisfied that this is the true construction of the act; for though, generally speaking, usage contrary to an act of parliament cannot bind us in construing it, the not rating money shows what has been the opinion of the profession upon this subject." *Lord Kenyon, C. J.*, then said, "That he thought there was great weight in the reasons urged by his brethren against rating money; that he had himself expressed great doubts of his own opinion, and that he was therefore glad that

(a) 26 Geo. III. c. 60.

that part of the rate would be quashed by the opinion of the Court." And on a subsequent day his lordship mentioned an expression of *Yates, J.* upon the subject of rating personal property in a case in Hil. 1769, which was not taken notice of by Sir J. *Burrow*, in his report of it. "If personal property be rateable, it is not to be done at random, and to leave the party rated to get off as he can; but the officer making the rate must be able to support what he has done by evidence; and no personal property can be rated but the clear liquidated surplus after paying all his debts."—The Court ordered the rate to be confirmed as to the ships and stock in trade, and amended as to the other points.

What Personal Property, &c. not rateable.

2. WHO ARE OCCUPIERS.

The occupier intended, is every person occupying that which produces profit, whether to himself or to the person under whom he holds.

Who an occupier.

Jeffrey's case, 5 Co. 66. *W. J.* had and occupied or received rent for thirty acres of land in *H.*, but was himself an inhabitant of *C.*, in the same county, and never did inhabit in *H.* He was assessed to the church rate of *H.* at so much *per acre* for his land there. And upon application to *K. B.* for a prohibition to stay proceedings against *J.* in the spiritual court for payment of the assessment, it was resolved, that although the house he dwelt in was in another parish, yet as he had lands in *H.* in his proper possession and manurance, he was in law a parishioner of *H.* That by manuring lands in *H.* he was by that resident upon it, and was therefore a parishioner of *H.*, as to this purpose. But when there is a farmer of the same lands, the lessor shall not be charged for them in respect of his rent; and see *Burn's Eccl. Law*, 8th edit. by *Tyrwhitt*, vol. i. p. 350, n. (9).

Occupiers residing in another parish.

In general the occupier, not the landlord, is to be rated; but in some modern local acts the landlord is made liable, as in the parish of *St. Pancras*, 59 Geo. III. c. cxxxix. s. 77; and see *Rex v. Dyer*, 2 Adol. & El. 606; and see *Cambridge case*, 7 Taunt. 54.

Mode of occupation.

The land may be occupied by means of pipes for gas, water, &c. (*Rex v. Brighton Gas Company*, post); or by the enjoyment of an exclusive licence in the land (*Rex v. Chelsea Water Works Company*, and *Rex v. Trent and Mersey Company*, post); but the owner of a mere easement, as of a right of navigation or ferry, who cannot maintain trespass, is not a rateable occupier (*Rex v. Thomas*, *Rex v. Nicolson*, post.) These cases are considered more fully hereafter.

Rex v. Gardner, Cowp. 79. The master and fellows of *Catherine Hall, Cambridge*, purchased several houses, and pulled them down, and converted part of the ground on which the said houses had stood into an area, and planted the same with trees for ornament. The parish assessed them for the same to the poor rate. The questions were, whether the master and fellows, being a body corporate, were liable to be rated, and whether the ground, as it was in its converted state, could be rated. Lord *Mansfield*, C. J. "The question is, whether in law a corporation may be considered as occupiers or inhabitants? By the statute of *Eliz.* all lands and all real property are rateable to the poor, and must have occupiers and inhabitants, in respect of taxation; therefore, if a man have no tenant, and be seised of lands in fee, he is said to occupy them himself, or by his bailiff or agent. (a) No case hath been instanced to show that a corporation is exempted from this tax; and I can find no authority in law which says they cannot be rated. And the authorities which have been cited tend to prove that corporations are rateable both as inhabitants and as occupiers; if they are liable in respect of the repairs of bridges and of churches, they are equally so by the statute of *Elizabeth* in respect of the poor. As to the objection, that this area yields no profit, and therefore ought not to be rated, the answer is, that the value is in the judgment of the assessors; and if the college think themselves over-rated, they have their remedy by appeal." Mr. *J. Aston*, "I have no idea but that the corporation may be occupiers; and as to the remedy of levying a duty upon

The master and fellows of a college are rateable as a corporation for what they occupy.

Corporations are rateable.

(a) See *Cambridge Case*, 7 Taunt. 54.

2. *Who are Occupiers.*

a corporation, the books all agree that it can be levied, though they differ in the mode. *Sheppard*, in his *Treatise upon Corporations*, says, 'If a sum of money be to be levied upon a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member of the corporation.' But in the case of the city of *London*, concerning the duty of *water-bailage*, (1 *Ventr.* 351,) it is different, and is thus: 'Note: it was said that for a duty or charge upon a corporation, every particular member thereof is not liable; but process ought to go in their public capacity.' And this is the right law. In the case of *Thursfield v. Jones*, (*Skin.* 27,) the corporation were cited, not by their proper names, but in their public capacity; and the court said 'If the company had neither land nor goods, there was no way to make them appear; but if they stood out, they must lie by the heels in their natural capacity.' Therefore the idea that a corporation is not liable to be rated, or amenable by process in respect of a rate, is not well-founded. Besides, by the act of 17 Geo. II. c. 38, the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties. So that their property is answerable, though they cannot personally be punished." The other two justices concurred. (And see *Cambridge case*, 7 *Taunt.* 54.)

Cortis v. The Kent Water Works Company case, 7 *B. & C.* 314. By a local act for the relief of the poor, certain commissioners were enabled to make rates upon all and every person or persons who held, occupied, or possessed land in the parish; it was held that a corporation was liable to be rated, although by a clause, giving an appeal to the quarter sessions to any party aggrieved, such party was bound to enter into a recognizance.

Rex v. Aberavon, 5 *East*, 453. It was admitted that a corporate body was rateable.

Rex v. St. Mary the Less, Durham, 4 *T. R.* 477. Upon an appeal for being rated for the whole instead of a part of a house, the sessions amended the rate, and also stated, that the appellant purchased the premises and repaired them, but neither he nor any other person resided therein, except as hereafter mentioned, but he kept the key. In one of the rooms the appellant kept a lathe for his amusement, and had sometimes a fire in that room, and three chairs and a table; and in another room he kept corn for his horse; and he also occupied the garden, worth 40s. a-year, and the gardener sometimes put his flower-pots, shrubs, &c., and some of his working tools, into another part of the dwelling-house, where other lumber was also put, but no person had ever slept or lodged in the house, nor had any furniture been kept there (except as above). The appellant, out of charity, had permitted a poor man and his wife to live rent free in the kitchen, between which and the rest of the house the door of communication was stopped up. The stable had not been for upwards of two years used for any other purpose than as a dog-kennel. By the court: "As this person occupied the garden and part of the house, his servants other parts, and a poor man another part, but those occupations were not distinct from his own, he ought therefore to be rated for the whole, for it would be attended with great inconvenience to have to inquire into each particular case what rooms of a house the owner occupied before he could be rated." But see *Rex v. Morgan*, 2 *Adol. & El.* 618.

In *Rex v. Aberystwith*, 10 *East*, 354, the appellant, being surgeon of a militia regiment, was occasionally absent from home, and left an assistant in a part of his house: his wife and daughter also were absent, and the assistant had only the use of the shop, the remainder of the house being completely parted off from it. The garden was taken care of by a person paid by the appellant, and the person with whom the key of the house was left permitted a friend of the appellant's and his servants to lodge there. The house was always ready for the appellant's return. The court decided that such person was rateable for the whole house, for that he must be taken to have been, under these circumstances, the occupier of the whole house.

Rex v. Woodward, 5 *T. R.* 79. The appellants were rated for a Quaker's meeting-house, the basement story of which is divided into many small rooms,

If the owner of a house occupy a part thereof only, but his servants (a) occupy other parts, and no one reside in the house but a poor person, permitted to do so out of charity, the owner is rateable as occupying the whole.

Assistant occupying shop in the absence of master, makes master rateable for the whole house.

Meeting house of which no profit is made is not rateable.

(a) As to the occupation of a master by his servant, see *Rex v. Tynemouth*, post; and *Rex v. Morgan*, 2 *Adol. & El.* 618.

one of which is occupied by a person called the door-keeper, whose business it is to attend the door when necessary, and keep the meeting-house clean, for which he has a small salary. The remaining apartments are either not occupied, or are appropriated to the use of poor persons maintained by the Quakers. The meeting-house is solely appropriated to religious and charitable purposes. *The trustees, the persons rated, do not receive any rent for the same.* No pecuniary advantage whatever is made of the meeting-house. The court said it was impossible to support this rate on the trustees, who had no interest in the premises; and that there was no occupier at present, nor any profit made of it.

Robson v. Hyde, Cald. 310; 1 Bott, 181. The person rated was the lessee of a chapel and vestry-room demised to him to be always used as a chapel for the service of the Church of England, and by contract never to be used for any other purpose, but not consecrated. It is, if a profit be made of it by letting out the pews or otherwise, rateable to the poor. But if it were absolutely given to the public, it might be a strong ground for saying that it was not rateable in his hands, at least out of whom his property had passed, and by whom nothing is reserved.

Rex v. Agar, 14 East, 256. In 1804, the appellants purchased a piece of ground, upon which, by voluntary contributions, they erected a chapel. The premises were conveyed to them, *upon trust*, that they should let the pews in the chapel under such payments as they might think fit, and upon other trusts; the consideration for the purchase of the ground, and the expense of erecting the chapel, were raised partly by voluntary donations and partly by sums borrowed by the appellants. The current expenses in supporting the chapel during the year 1810, were 247*l.* 7*s.*, and the pew rents for that year amounted to 221*l.* 4*s.*, which were applied towards the discharge of the insurance, of the rent and taxes of two houses occupied by the two methodist preachers, of the chapel cleaners, of the salary and board allowed to two methodist preachers, and of the salary for conducting the singing in the chapel; these expenses amounting to 247*l.* 7*s.* Lord *Ellenborough, C. J.* said "The question is, whether the trustees are rateable? In what situation do they stand to the property? In 1804 they purchased the ground on which they afterwards erected the chapel; they are therefore the owners of the property. If they had gratuitously admitted persons into their chapel, and provided preachers for the congregation, without receiving any thing, they would have come within *Rex v. Woodward* (5 *T. R.* 79). What similitude then does this bear to *Waldo's case* (post, 125), who gratuitously devoted his property to the education and maintenance of paupers, but derived no profit to himself? Here profit is made of the property to the full by the trustees. If it were absolutely necessary that all the sums stated in the account of expenses should be expended, it should have been expressly found in the case that they were all *necessarily* expended in the carrying on the business of the chapel. The trustees may go on increasing their expenditure in this manner as their profits increase. I admit that it is not found that any of the items were fraudulently swelled for the purpose of this question; but it is not enough in these cases to show that the expenses laid out in any particular year absorbed the profits of that year; for the benefit of such expenses may be derived in future years, as is often the case with improvements of farms. If valuable lands in the neighbourhood of a town be covered with buildings in one year, the expenses of that year would probably exceed its profits, but the land would not cease to be valuable and rateable on that account. Whether these which are stated were necessary expenses or not, I

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A private building used as a chapel (a) is rateable, if a profit be made of it.

The trustees of a methodist chapel (a) receiving money annually for the rent of the pews, are rateable for the profits made of the building, though in fact they expend the whole of what they receive in making disbursements for repairs, &c., and to attendants in the chapel, and in paying the salaries of the preachers. (b)

(a) Churches and chapels are now exonerated from parochial rates by 3 & 4 Will. IV. c. 30. See post.

(b) By a decision of Mr. *Halls*, one of the magistrates of Bow Street office, on the 2d April, 1833, in a case from the parish of St. Martin-in-the-Fields,

any member of a dissenting congregation is liable for the parochial rates of the chapel he attends, and his goods may be distrained for the same. In the case here referred to, the party summoned was not a trustee, nor had he any right or title to the chapel property whatever.

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cannot take upon me to say from the case, but it should at least have been found that they were all *necessary*, to produce the rent of the rent received. This is not like the cases where persons have been held not to be rateable for property, as not being in the occupation of it; for these appellants are the original proprietors of the land on which they have erected a chapel by voluntary subscription, under no restriction as to the profits to be derived from it, and in the actual receipt of rents, which they have applied in manner stated." *Grose, J.* "The first question is, whether there is any thing rateable in this case? and here is clearly rateable property; for there is land, and a building which produces profit. But it is said that it does not produce profit sufficient to warrant a rate on these defendants in respect of it. But that depends on the manner in which they chuse to apply the proceeds. It does in fact produce profit, and they dispose of it as they please afterwards. How then does this differ from the case of other buildings which produce profit? If this be not rateable on account of the subsequent application of the profits by the trustees to the benefit of others, why should any estate which a man holds in trust be rateable? Then, 2dly, the trustees who receive the profits are the occupiers of the property, and therefore they are liable to be rated for it." *Le Blanc, J.* "The subject-matter of this rate is within the stat. 43 Eliz. c. 2, which directs the occupiers of lands and houses to be rated. The appellants purchased the lands and erected a chapel, and now let the seats and receive rents for them: they are therefore the occupiers of the building. Then the only question is, whether they are liable to be rated for it on the ground that it is not valuable property? It is let out on an annual rent. But it is objected, that though they receive profit for it in the first instance, they afterwards dispose of the whole on the establishment, in paying the salaries of the ministers, and in defraying other expenses of attendants and repairs. I agree that this is in substance a rate on the ministers, for if they had let out the pews and received the rents, they would only have received the surplus profit after payment of all the necessary expenses of the chapel; but the pews are let out by those who are in effect the trustees for the ministers, for they pay over to them so much as remains after defraying the expenses. The trustees, therefore, must be considered as the occupiers, because the property is in them, and they let out the pews, and they are therefore rateable for the profits in the same manner as the ministers themselves would be if these latter let out the pews." *Bayley, J.* "The property itself is rateable, and the trustees are the proper persons to be rated for it. It is a house, and the stat. of Eliz. says that occupiers of houses are rateable. It produces profit, for certain sums are annually paid into the hands of the persons rated by those who rent the pews. Then it is objected, that part of the money so received which is applied to the salaries of the preachers, is referable to them and not to the house; and that if there were no preachers, there would be no pew-rents received: I agree that the money so received is partly referable to the preachers, but a part is also referable to the house itself, in respect to the superior accommodation afforded by it to those who attend the preacher: for such large sums would not be paid to hear them in the open air. There is no hardship in saying that the trustees shall pay the rate, for they will stop *in transitu* so much as they pay for this purpose; and the ministers are not the proper persons on whom to impose the rate on the building in respect of their salaries. The trustees are not under any obligation to make the payments to the extent stated: they have paid the money in fact; but they were under no obligation to do so at all events. This, therefore, being property which in its nature is rateable, and profit being in fact made of it, and that profit passing in the first instance through the hands of the trustees, I see no doubt but they are rateable for it." Order and rate confirmed.

Where a profit is made of a building occupied by servants and lunatics, the person in receipt of the rent is rateable.

Rex v. St. Giles's, 3 Bar. & Adol. 573. The appellants were rated as the trustees of a lunatic asylum, which had been purchased by voluntary subscriptions, and was originally designated for lunatics, being parish paupers or members of indigent families; but the finances of the institution being inadequate to the maintenance of that description of persons only, a limited

number of affluent patients were afterwards admitted, at rates of payment in proportion to their abilities, with a view of providing a surplus towards the support of the most necessitous. The asylum is now large and flourishing. The trustees receive yearly payments from 100*l.* to 20*l.*, or weekly payments from three guineas to 6*s.* Sixty-two patients pay 6*s.* per week; nearly the whole of these are parish paupers. 300*l.* per annum, arising from stock bequeathed to trustees in maintenance of lunatic parish paupers, paid to the asylum out of the *Lupton* fund. From 1825 to 1830, inclusive, the donations amounted only to 249*l.* The balance in the hands of the trustees in 1825 was 1579*l.*; and in 1830, it had increased to 2572*l.* The institution had also made purchases and erected buildings out of the monies accumulated in their hands during this period, to the amount of 1000*l.*; so that the accumulation during the five years was about 2000*l.* All benefactors to this institution of 20*l.* or upwards at one time, as well as certain public functionaries for the time being, are governors, who exercise the entire control over the asylum and its funds. A committee of governors is appointed every quarter at a general meeting, and to them is delegated the power of auditing the accounts, contracting with tradesmen for provisions, hiring and discharging servants, determining what sums are to be paid by patients, and what persons are to be admitted, discharging patients, and otherwise giving such orders and directions as they think requisite. The paid officers of the institution receive salaries amounting to 986*l.* a year. The apothecary resides in the asylum, and has two furnished rooms to his separate use, in addition to his salary, which would be greater without these rooms. The house-servant and matron have no exclusive apartments except bed rooms. The attendants, domestic servants and lunatics are the only other inmates of the house. The trustees do not derive any personal benefit from the institution. The asylum is situate in the respondent parish, and several persons in consequence of being employed about it have gained settlements in and become chargeable to the said parish. The trustees appealed on two grounds, first, that the asylum was not rateable; and secondly, that the trustees were not persons liable to be assessed. *Cur. adv. vult.* Lord Tenterden, C. J., "Upon these facts it seems to us impossible to say that this building does not produce a profit by means of the entertainment of those persons *who are able to pay for their reception*; and if any profit be made, the application of it when made is immaterial as to the question of rateability. Then supposing the building to be rateable, the next question is, who are the occupiers to be rated? Not the servants, for they cannot be considered as occupiers, and certainly not the unhappy lunatics received into the building. Then the property being subject to rate, the trustees who are in the actual receipt of the profits must be the persons rateable. There are no persons who can be rateable but the owners, and these are the owners. The case is not distinguishable from *Rex v. Agar*," (*ante*, 121.)

Rex v. Governors of St. Luke's Hospital, 2 Burr. 1053. This case differs in some of its facts from *Rex v. St. Giles*, for the sessions found as facts that none but poor lunatics were received into this asylum, that the trustees made no profit and had no occupation or possession than by the lunatics and servants. It appeared that certain lands had been demised to lessees for the purpose of erecting an hospital for lunatics: twenty-nine houses standing upon these lands were pulled down, and the hospital erected; and divided into cells for the lunatics, offices for their sustentation, &c., and apartments for the servants who were hired to attend them: and was supported by voluntary contributions; and J. M., one of those who were rated, was the principal hired servant, living in the hospital, and the trustees who were rated had no benefit from it nor any occupation thereof. Lord Mansfield, C. J., delivered the opinion of the Court. He said, "cases of this kind must depend on the

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Trustees of a lunatic hospital appropriated to the poor are not rateable having no profit or occupation; nor a servant having no exclusive apartment. (a)

(a) By 9 Geo. IV. c. 40, land purchased for a county lunatic asylum shall not be rated at a higher value than the land was at the time of the rate. See post, "Proportion."

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The governors of an hospital, or the poor persons, or the servants, are not such occupiers as can be rated.

Royal palaces in the occupation of the royal family are not rateable, but servants occupying house and land belonging to the crown are rateable.

A beneficial occupier of the king's lands, whether by gift or for wages, is rateable for the same.

Tenant at will is rateable.

The officer of a college is rateable for the apartment he inhabits in the college.

A master gunner appointed by the crown, and stated to be occupier of the king's battery house, is rateable.

nature of the respective hospitals. That proprietors of lands might convert them into a state in which they could not be rated to the poor. That nominal trustees could not be rated; that servants could not be rated excepting for their own particular apartments, and it was not here stated that there were any such; and that the *objects of this charity* certainly could not. That, therefore, as no occupier could be found to be rated, there could be no rate at all."

Rex v. St. Bartholomew's the Less, 4 Burr. 2435. The mayor and commonalty of London, as the governors of *Bartholomew hospital*, were rated to the poor for it. Lord Mansfield, "The poor rate must be charged upon the occupiers. In the case of *St. Luke's hospital*, and in that of *Chelsea hospital*, the officers were rateable as occupiers. Here the corporation *de facto* are not *de facto* the occupiers. The poor are occupiers; but they are not rateable."

Rex v. Matthews, Cald. 1; 1 Bott, 170. Matthews was rated for a keeper's lodge in *Windsor Park* and two acres of land, which he occupied as keeper. He appealed against the rate, and the case stated that the King was rated for his *Mews* in *New Windsor*, and for his *Mews* in *St. Martin's, Westminster*. Lord Mansfield, "The question is, whether this property is rateable? The royal palaces are not liable, nor have they ever been rated. As to the *Mews* in *St. Martin's parish*, that part of it only is rated which was taken in of late years, and was before that time ground belonging to some adjacent parish. But when a servant occupies house and land belonging to the crown, whether he pays for the same by rent or by service, he is rateable."

Lord Bute v. Grindall, 1 T. R. 338. Lord Bute was ranger of *New Park, Richmond*, and had the custody of the houses, lodges, &c., and also the *herbage and pannage of the park*: some part of the park is enclosed land, some part meadow, and some arable land sown with corn and clover in the ordinary course of husbandry: the meadow has been always mowed, and the hay made by persons paid by the king, who found the seed: sixty-six loads of hay have been always carried by the king's waggons into the park for the deer, and the overplus stacked up for the king's horses, and the ranger's horses; when the arable land was sown with corn, the ranger found the seed; and when with clover, the king found the seed; and was manured, ploughed, and sown by the king's servants and horses, and reaped by the ranger, and sold for his benefit, and the king had no part; the straw was used for thatching the hayricks, and by the king's cart-horses: the profits arising to the ranger from the said lands are worth 100*l.* a-year; but the herbage and pannage of the park have yielded no profit to the ranger. Lord Mansfield, "The question is, whether the plaintiff is rateable at all? Not for how much or in what proportion. It is clear he is not rateable for the herbage and pannage, because they yield no profit; but there is a parcel of land inclosed which he sows, and afterwards reaps the corn from, and the profits arising to the ranger from the said lands amount to 100*l.* a-year: therefore he is occupier; and *quo nomine* occupier can make no difference whether by gift or for wages." Buller, J., "It is immaterial what interest the occupier has in the lands, whether he holds as tenant at will or at any other tenure: it is not necessary to enquire into the occupier's title."

Ayre v. Smallpiece, 1 Bott, 154. The comptroller of *Chelsea college*, residing in the college, was rated to the poor, for having apartments *distinctly and separately to his own use*.

Rex v. Hurdis, 3 T. R. 497. The appellant objected to the rate because one *Wood*, gunner of the king's fort and battery at *S.* who was a servant to his majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was charged as the occupier of the battery-house. *Wood* was a gunner at the fort of *S.* The fort and battery-house are the property of the crown, and a master gunner is an officer appointed by the crown, and removable at pleasure. *Wood* being so employed, occupied the whole of the house, except one room; the furniture belonging to him. Lord Kenyon, C. J., "I do not feel that my opinion upon this subject militates against any decided case, but I shall determine upon the ground of positive law, as it is laid down in the

43 Eliz. which subjects every occupier of lands, houses, &c., to be rated to the relief of the poor. Now it is expressly stated in the case that *Wood was the occupier of the battery-house*; and though perhaps it might have been contended below that he was not the occupier, in the legal sense of the word, yet the finding of the sessions precludes that question here. It is not, however, a general position, that a servant of the crown occupying a house in respect of his office is not rateable for it. Soldiers indeed cannot be said to be the occupiers of their barracks, in the legal sense of the word; they are no more than mere servants. Therefore *Wood* was properly rated."

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Soldiers are not occupiers in the legal sense of the word.

Lord Amherst v. Lord Somers, 2 T. R. 372. By warrant under the king's sign manual, a lease was entered into by Lord R. Bertie with one A., by which certain buildings were covenanted by A. to be built by him as a riding school, &c., for the use of a troop of the horse guards. Lord Amherst succeeded Lord R. Bertie, and had possession given him of the school, &c., and the buildings were used always for the purposes of the troop, and never in any manner for the private benefit of Lord Amherst. The rent was paid by stoppages from the pay of the troop. By *Ashhurst, J.*, "It is admitted that neither the possessions of the crown, nor of the public, are liable to be rated to the poor; and as this property falls within one or the other of these descriptions, it is not rateable to the poor." And by *Buller, J.*, "In this case the plaintiff did not contract as general lessee, but merely for the benefit of the public, by order of the crown; and he made no use whatever of the stables. Therefore he cannot be considered as the occupier."

Stables rented by order of the crown for the use of a regiment, are not rateable, where the lessee himself does not occupy them on his own particular account.

Rex v. Terrott, 3 East, 506. The appellant was an artillery officer, and had his quarters at a building fitted up at the expense of the crown. There were several apartments beyond what were necessary for the regimental business, and he resided in them with his family; the usual barrack furniture was provided by the crown. He was rated in respect of these apartments. By *Lord Ellenborough, C. J.*, "The principle of the subject is, that if the party have the use of the building, or other subject of the rate, as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the crown in the beneficial occupation of a subject, whether he be a civil or a military officer of the crown, is equally rateable. But if the use of, or residence upon, the property, be either as the servant of the crown, and for public purposes only, or as a mere public officer or servant, the parties having the use of the property merely for such purposes are not rateable; because the occupation is throughout that of the public, and of which public occupation the individuals are only the means and instruments." Rate confirmed.

Officers supplied with accommodation not strictly necessary are rateable.

The rule as to public servants.

See also *Holford v. Copeland*, 3 Bos. & Pul. 139, in which the principle of the above decisions is fully discussed and elucidated.

[A Beneficial Occupier of Charitable Institution may be rated.] *Rex v. S. Waldo*, 1 Bott, 183; *Cald.* 338. Mr. Waldo, about sixteen years before, pulled down a house, for which he was rated to the poor eight guineas a year, and built on the same spot a new one, in which ten poor girls were educated, maintained, and brought up on his charity; he provided a woman to superintend and instruct them. She and the ten girls were the only inhabitants, and the house was solely appropriated for this purpose; Mr. W. was rated for this house. *Lord Mansfield, C. J.* "Mr. W. makes no profit of this building; and it is sufficient that this is so in fact, and the profit is in fact here applied to public and charitable uses."

A person who builds an almshouse is not rateable, if no profit be made of it.

Rex v. Munday, 1 East, 584. The persons rated were the objects of a charitable foundation, in the actual occupation of the alms-house and charity lands, and of certain stock upon the same (being the increase of stock originally given with the house, &c. by the will of the founder,) together with a certain wood, which they were bound to fence at their own charges; and they were liable to be dismissed whenever they infringed upon the rules of the foundation, and were maintained solely by this charity. The court held

But persons living on charitable foundation for their own benefit are rateable.

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that these persons were justly rated; for that the 43 Eliz. c. 2, is general, the rate for the relief of the poor being to be levied upon *every occupier of lands, houses, &c.* and there is no exception of lands devoted to charitable purposes. And that in the present case there was a beneficial occupation.

Rex v. Green, 9 B. & C. 203; 4 Man. & R. 164, S. C. An appeal against a poor rate confirmed. Case:—The Merchant Tailors Company are patrons of a charitable establishment for the relief of the widows of poor freemen of the company. About three years ago, the company purchased land in the parish of Lee, whereon they erected alms-houses for such poor widows. The appellants are poor women resident in the alms-houses as alms-women and objects of the charitable establishment, and pay no rent for the same, and are removable at pleasure. The alms-houses were erected at the sole expense of the company. Before the purchase of the land the same was rated on the occupier at the rate of 2*l.* 5*s.* per annum. The question was, whether the poor widows were liable to be rated? *Bayley, J.* “I have no difficulty in coming to the conclusion that this property is rateable. The 43 Eliz. c. 2, enacts, ‘that the rate shall be imposed upon every occupier of lands, houses, &c.’ It has been made a question in several cases whether a person residing in a house used for charitable purposes is liable to contribute to the relief of the poor. In

Master of a free school is rateable.

Rex v. Catt, 6 T. R. 332, it was decided that the master of a free school, appointed by the minister and inhabitants of a parish under a charitable trust, occupying a house and garden belonging to the school, was rateable, although they were held by him as a recompense for teaching, he being a beneficial occupier. Lord *Kenyon* there says, ‘To the authority of the cases cited I subscribe my assent. They proceeded on the grounds that there was no occupier. In *Rex v. Waldo*, (*ante*, 125,) the rate was held to be bad, because there was no occupier; the poor children who were placed there for education could not be considered as occupiers, neither could the women-servants who superintended them. That case could not be distinguished from that of St. Luke’s Hospital, where the rate was also quashed, because there was no beneficial occupier. But when a case arises where a person is found to be the beneficial occupier of a house, he must be rated, though the house be appropriated to charitable purposes. As long as Richmond park continued in the hands of the king, it was not rateable; but when the ranger made profits of it, and beneficially occupied it, it was held to be rateable in his hands. So if this person had been put in merely to look after the pupils, and had not occupied the house, he would not have been rateable; but it appears that he is the beneficial occupier of this house and garden. By the old land tax act, certain property given for charitable purposes is exempted from that tax; but there is no such exemption in the acts respecting the relief of the poor. In *Rex v. Munday*, the objects of a charitable foundation, in the actual occupation of an alms-house, were held to be rateable. That case is not distinguished from the present in point of principle. There they were rated for the alms-house and lands in the sum of 2*l.* 5*s.*, and the court held that they were rateable for the house and lands; they must, therefore, have been considered as occupying that house rent free. It is true, that in this case the objects of the charity are described as poor persons, but there is no distinction in the statute between poor persons and others. If they are occupiers of property from which they derive a benefit, they are rateable. Mr. *Nolan*, p. 188, after stating the authorities upon this subject, says, ‘the distinction, therefore, as to where charities are rateable, and where they are not so, seems to depend upon this: whether there is any body who can be rated as beneficial occupier.’ There was therefore no ground for the appeal.” *Littledale* and *Parke, J.*, concurred. Order confirmed.

Property in hands of the king not rateable.

Where profits are applicable to public purposes they are not rateable.

Rex v. Commissioners of Salter’s Load Sluice, 4 T. R. 730. The defendants were assessed for the tolls of a sluice, which, by the act of parliament passed for the supporting of the sluice, were “to be applied for the several purposes of the said act, and for no other whatever.” *Per Lord Kenyon, C. J.* “It is not sufficient to point out property within the parish, but there must also be some beneficial occupant or occupants. Corporations may unques-

tionably be rated. Here there is property which is the subject of a rate, but there is no occupier of it." Rate quashed.

Rex v. Liverpool, 7 B. & C. 61; 9 D. & R. 780, S. C. This was a rate on the trustees of the docks of Liverpool. Case:—"The dock estates within the parish of Liverpool are vested in the mayor, aldermen, bailiffs, and common council of Liverpool, as trustees of the docks and harbour of Liverpool, by virtue of several acts of parliament, (viz. 8 Anne, c. 12, 3 Geo. I. and 11 Geo. II. c. 32, 2 Geo. III. c. 86, 25 Geo. III. c. 15, 39 Geo. III. c. 59, and 51 Geo. III. c. 143, all of which, excepting the second, are public acts,) and consist of a large quantity of land, to the extent of 100 acres. Part of those estates was granted voluntarily by the corporation of Liverpool, part was sold by that body to the trustees for a pecuniary consideration, and other parts have been purchased by the trustees from private individuals, according to the powers given to them by the said acts. Before the construction of the present works part of the land was waste, both above and below high-water mark, but other parts consisted of lands and buildings in the occupation of individuals rated to the relief of the poor of the said parish. The dock estates at present consist of several wet docks, in which vessels may be constantly afloat, dry basins, that is to say, dry at low water, wharfs, piers, slips, cranes, weighing machines, offices, and yards for storing goods, and other conveniences requisite to form a complete dock; and the trustees are authorized to receive large sums, under the name of dock rates and duties, for the accommodation of vessels in the said docks, by virtue of the said acts of parliament. The trustees manage the dock estates by their servants and agents, who receive and account to them for the dues and profits arising as aforesaid, and no part of the estates and premises above assessed is let off to other persons. The engine-house is used for the purpose of keeping a fire-engine, which the trustees have provided out of the public funds for the security of the shipping, as empowered by the same section, and no rent is charged to or paid by any one for the same. Of the different offices enumerated in the schedule some are for the accommodation of the dock masters and gate-men at the various docks, as places of shelter, and merely for the despatch of public business; others are occupied by the collector of the dock rates, the harbour-master, and other public officers of the trustees, solely for the purposes of the dock business. No rent is charged to them for the use of these offices, and no part of them is occupied as a residence by any one. The two yards mentioned in the schedule are hired by the trustees at an annual rent, as a place necessary for the deposit of the various articles used in the erection and maintenance of the docks, and from the occupation of which they derive no personal benefit." After argument, Lord Tenterden, C. J. "It seems to me that there is no solid ground for the distinction which has been taken as to those parts of the property rated, which are *rented* by the dock company; for if there be no beneficial occupation, it can make no difference whether the occupier be the owner or not. As to the main question, *Rex v. The Commissioners of Salter's Load Sluice* is decisive. There the tolls were by act of parliament directed to be applied 'to the purposes of the act, and to and for no other use or purpose whatsoever.' The statute under which the dock rates in question are levied does not indeed contain an express direction that the rates shall be applied to the purposes specified, and no other; but it directs that certain burdens shall be discharged, and that then the rates shall be lowered; and, therefore, any application of those rates to other purposes not specified would be a direct violation of the statute. Nothing of that kind is suggested, and, therefore, there is not, in reality, any difference between this case and the former. The principle of not rating property of which no person has a beneficial occupation, is not confined to canals or docks, or property of that nature. A quaker's meeting-house, if the pews are not let, is not rateable, as was decided in *Rex v. Woodward* (*ante*. 120), (a) and the same would be applicable to a chapel with the rites of the Church of England, or to a dissenting meeting-house. On the other hand, it was held

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Dock dues, if expended, pursuant to the act, entirely in making and keeping the docks, &c. in repair, are not rateable.

(a) See now 3 & 4 Will. IV. c. 30, *post*.

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When the surplus tolls of a navigation were directed by statute to be expended in repairing public bridges and highways, it was held that they were not rateable to the poor.

in *Rex v. Agar* (*ante*, 121), that when the pews of such a meeting-house were let, the trustees were rateable in respect of the rents, although not received to their own use, but for the benefit of the minister. Here the trustees were not occupiers in the ordinary sense of the word, and no profit was received for the use of any person. It is said that the docks were made by the corporation of Liverpool in order to improve their private property; if such an effect is produced, that property will be rateable for the improved value." *Bayley and Littledale, Js.* concurred.

Rex v. The Trustees of the River Weaver Navigation, 7 B. & C. 70; 9 D. & R. 788, S. C. Rate upon the trustees of the river Weaver Navigation confirmed. Case:—By 7 Geo. I., for making the river Weaver navigable, it was enacted, that after the work shall be finished, and the charges paid, the clear produce of the rates and duties shall be employed towards repairing the public bridges within the county of Chester, and such other public charges upon the county as the justices at quarter sessions shall direct. If any surplus remained, it should be expended in repairing certain highways. The tonnage rates upon the Weaver are not charged by the mile, but one shilling per ton is charged upon the whole line of river; and a vessel navigating the whole, or any part of the said navigation, is subject to the same charge. This tonnage is paid quarterly at the Navigation Office at Northwich, which is a distinct township from Moulton. The annual accounts are regularly audited by the clerk of the peace, and filed at the sessions, when the balance, arising from the rates above the necessary charges for the maintenance of the navigation, is by direction of the magistrates paid to the county treasurer, for the general purposes of the county, and to none others. *Bayley, J.* said, "We think that as there is not any clause in the statutes set out, which vests the soil of the river Weaver in the trustees, they cannot be rateable to the relief of the poor in respect of the tolls." (a) It was then suggested that the trustees were rated in several parishes through which the river Weaver runs, and that in some of them they might be considered as the occupiers of land; it was therefore important to have the opinion of the court as to their liability to be rated under such circumstances. Upon this point the court deferred their judgment until *Rex v. Liverpool* (*ante*, 127), had been decided, upon which occasion *Bayley, J.* said, "The principle of this decision is applicable to the case of *Rex v. The Trustees of the River Weaver Navigation*. There the surplus tolls remaining over and above the expenses of supporting the navigation were to be applied to the repairing and maintaining of bridges and highways. Those were public purposes, and as no part of the monies received could be applied to private purposes, those monies were not rateable in the hands of the trustees. The order confirming the rate must therefore be quashed upon this ground, as well as that which was mentioned by the court at the time of the argument."

The tenant of a farm may be rated for the whole farm although he lets a dairy. The dairyman might have been rated, but the rating of the tenant for the whole and the omission of the dairyman, is no ground of appeal for a third person.

Rex v. Brown, 8 East, 532. The farmer let a dairy, the cows to be exclusively depastured on the farm. The farmer was rated for the whole. Lord *Ellenborough, C. J.* "The appellant complains of the rate, without showing any grievance; because the farmer having been rated, as we must presume, for the full profits of the farm, it matters not to the appellant whether or not the rate in respect of that farm could have been better distributed by laying one portion of it on the farmer and another portion on the dairyman. The appellants proportion of the rate would remain the same in either case. It is said that the interest which the dairyman takes under such agreement is a tenement in law, and gives him an interest in the land by which he may gain a settlement, and that I do not dispute; and, therefore, if the dairyman, considering him and not the farmer as the occupier of so much of the farm as the cows were depastured upon, had been rated as such for it, I do not see what objection could have been made. But here the objection is, that the farmer is rated for the whole farm, the profits of which arise principally from the stock upon it, and a part of those profits are again required to be subjected to another rate in the hands of the dairyman. But there is no objec-

(a) As to this point see *Rex v. Thomas*, *post*.

tion to the rate as it now stands, and great inconvenience would ensue if the profits of different persons out of the same farm were subdivided and a proportionable rate laid upon each, instead of one general rate for the whole on the general occupier of the whole. A farmer may make a bargain with one man to let him have a field of grass to cut, or he may let the aftermath of his meadow some to one and some to another, and this may not only vary every year, but every month or oftener, in the neighbourhood of populous towns. These are substantially the tenants of the land while their subordinate interests subsist, and either might be rated for it during such holding; but if there be one general rate, made on the general occupier of the whole farm, including all these particular profits and subdivisions of interests, by which, in fact, he is benefited, who can say he is injured by the rating of one for the whole, rather than the several subtenants of those partial interests for their respective proportions, deducting the value of them from the rate upon the general occupier? - And as to the convenience of the general rate for the whole, there can be no question of it. Other cases may be put: the owner of a house and garden may let the profits of his garden to his gardener, retaining the use of it in other respects, upon condition of the latter supplying his table with certain articles, or upon a rent; and though the garden might be rated for this interest, yet, if the owner were rated for his house and garden, what objection could any other person make to the rate on that account? The principle is, that the estate which has once paid shall not be made to pay again: and yet in all these cases it may be truly said that some profit is made by the subholder beyond what the general occupier receives. What was said by Lord *Mansfield* (a) does not contradict this, that where there was a proportion of the profits of the land rateable in the hands of the tenant, which was not rateable in the hands of the crown the tenant was assessable for it. But here the whole having been rated in the hands of the farmer, nothing remained to be assessed in the hands of the undertenant. It would be a different question if a farmer derived profit from stock kept upon his farm, but not connected with the management of it; as if he kept a large flock of cattle there, which he fed with oil cake for sale. There he would be separately rateable for it; not as stock of his farm, but as stock generally, from which he derived a separate and distinct profit. But here the dairy cows are properly speaking the stock of the farm, and as to any separate profit derived from them to the dairyman distinct from the farmer, the same might be said of a man to whom the farmer sold the milk by pails full on the premises, and who after mixing it with water retailed it again at a profit." *Grose, J.* "The question is, whether the appellant has any ground of complaint. He complains of being rated too much because certain persons renting dairies in the parish have been omitted in the rate. But it appears that though those persons be not rated, others are so for the same subject-matter; because the profits derived from the stock of cows on the farm have in effect been once rated, being included in the rate upon the farmer for the profits of the whole farm, of which they constitute a part." *Lawrence, J.* "It is contended that the dairymen are liable to be rated for their dairies on two grounds: 1st, That a dairy is a tenement, the taking and occupying of which is capable of conferring a settlement, and that every occupier of a tenement is liable to be rated in respect of it. That may be so, but the ground of appeal is, that the appellant is injured by the omission of these persons in the rate. But if it appear that others are rated for the whole value of the farms, including the profits of the cows depastured on them, and that the appellant sustains no injury in any way, the ground of appeal fails. Then, secondly, it is said that the cows are personal property, and that the dairymen are liable to be rated for the profits made by such stock. But this is the stock by which the farm is rendered productive, and having been once taxed in effect in respect of the produce in the hands of the farmer, is the produce to be rated again as milk in the hands of the dairyman? By the same rule

(a) In *Lord Rute v. Grindall*, 1 T. R. 338, and 2 H. Bla. 265.

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might it not be rated again as butter, and again as cheese, in the hands of the same person, on account of the additional profit which may be made of it in either of these stages? This would be carrying the principle of rating much further than it has gone before. It would be very inconvenient to parishes to subdivide the rate in the manner proposed. If a person, taking the aftermath of a meadow, is to be rated for it instead of including it in the rate for the whole farm, what is to be done when this is taken, as it frequently is, by drovers of cattle passing along the road, who depart again in a few days and are nowhere to be heard of? Experiments of this sort, if carried into effect, would only introduce confusion. The amount of the rate would be the same; for if by underletting the aftermath the original renter make more of the land, he is rateable in proportion; and it will be found much more advantageous to the parishioners at large to abide by the old practice, and to lay one entire rate on the whole farm in the hands of the general occupier." *Le Blanc, J.* "I am surprised that the sessions should have reserved any case upon the application of this appellant, when the only question was, whether with respect to him this were an equal rate, or whether injustice had been done to him by the omission of the dairymen in the rate. For, supposing it to be a question whether the farmer or the dairyman were in possession of the property to be rated, and that it were a case of doubtful occupation, yet when it appears that one of them has been assessed for the whole property, and that neither of them complained of the rate, what pretence can there be for setting aside or altering the rate at the instance of a third person, who has no interest in that question, in order to decide a question of doubtful possession between the other two? Taking it, however, as a case between the farmer and the dairyman, it is true that the taking of a dairy in this manner has been held to give a settlement as upon the taking of a tenement; but it has only been held to be a tenement in respect of the interest in the land on which the cows are agreed to be depastured. But here the farmer has the general interest in the whole of the land out of which the other interest is carved: the cows fed upon it are his own, they are his stock; the dairyman is to have the care of them, and the trouble of milking them, and the profits arising from the produce of the cows, in consideration of a certain sum which he agrees to give the farmer. Then what is this in effect more than the farmer making this profit of his land and of his stock by this general agreement with the dairyman, instead of employing his own dairyman to milk the cows, and afterwards disposing of the produce when made into butter or cheese? It is a mode of selling the milk of his cows. Then it is said that the dairyman is rateable as for his personal stock; but he is not the owner of the cows, they are not his personal stock, he has no capital of his own, but he only makes a profit by his personal labour out of the capital of another person." Rate confirmed.

One who occupies a house as surveyor to the navigation of the river Lee, under the trustees of that river, held to be liable for poor's rates, although by act of parliament the tolls, &c. are exempted from being rated, and although the trustees have no beneficial interest but act for the public.

— *v. Armstrong, 2 Stark. c. 543.* This was an action to try the question, whether the plaintiff was liable to be rated for a house which he occupied under the trustees of the navigation of the river Lee. It was situated on the river, and had been built out of the tolls arising from the navigation of the river, and he occupied it for the purpose of superintending the business of the trustees. By the act of parliament it was expressly directed that the tolls arising from the navigation should not be subject to the poor's rates. It was contended that as the plaintiff was the servant of the trustees, who had no beneficial interest in the navigation of the river or in the tolls, he was to be considered as the servant of the public, and as exempted from the poor's rate: if the trustees had not built the house they must have paid for one out of the rates and duties collected on the river. *Abbott, C. J.* was of opinion, that the plaintiff was rateable in respect of this house. If he had received a salary out of the tolls, and had rented another house, he would clearly have been liable to be rated for it. Verdict for the defendants.

Rex v. Aberavon, 5 East, 460. Lord *Ellenborough* said, "I have great difficulty in deciding that a person who has mere permission to turn his cattle on another's land is rateable."

However poor the occupier may be, he ought to be put on the rate, (a) and a power is given to the justices with the consent of overseers to have the name struck off.

2. *Who are Occupiers.*

Power now to rate owners of certain houses, instead of the occupiers.

The 59 Geo. III. c. 12, s. 19, after reciting, that "whereas in many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded, by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences, or become insolvent before the rates charged on them can be collected; and it hath been found that in many instances the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged with or required to pay such rate, and do thus obtain an undue advantage to themselves; and by means of the premises the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor;" for remedy thereof, enacts, "that after the 1st of January, 1820, it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to resolve and direct, that the owner or owners of all houses, apartments, or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding 20*l.* nor less than 6*l.* by the year, for any less term than one year; or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor, for and in respect of such houses, apartments or dwellings, and the outhouses and curtilages thereof, instead of the actual occupiers; and the inhabitants so assembled in vestry may, and they are hereby authorized from time to time to rescind, renew, vary, and amend every resolution and direction as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the out-houses and curtilages thereof, be let at a greater rent than 20*l.*, or less than 6*l.*, as aforesaid; and the churchwardens and overseers of the poor of every such parish are hereby empowered and required to carry into effect all such resolutions and directions of the inhabitants in vestry assembled; and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound rate the owner or owners, being the immediate lessor or lessors of the actual occupier or occupiers, of every house, apartment, or dwelling to which such resolution and direction shall extend, for or in respect of the same, according to the actual rent at which every such house, apartment, or dwelling shall be let, after making a reasonable deduction from such rent, not exceeding in any case one-half of the same; and upon non-payment of the sum or sums so to be assessed, the same may and shall be levied upon, and the payment thereof be enforced against, such owner and owners, lessor and lessors, so to be assessed, and his and their goods and chattels, in like manner as rates for the relief of the poor may by law be levied and recovered, and the payment thereof enforced, upon and against any actual occupier on whom the same are charged."

S. 20. Provides that the goods and chattels of every occupier of any such house, apartment, or dwelling, which shall be found in and about the same, shall be liable to be distrained and sold for raising so much of any such rate or assessment being in arrear, as shall have become due during the occupancy of the person or persons whose goods and chattels shall be so distrained, (to be ascertained in a summary way by the justices granting the warrant of distress), so that in no case any greater sum be raised by distress of the goods and chattels of any such occupiers, than shall, at the time of making such distress, be actually due from such occupier for rent of the premises on

Goods of occupiers may be distrained for rates to the amount of the rent actually due.

Occupiers paying rates empowered

(a) Many examples are adduced in the Report of the beneficial effect of rating all the cottages in a parish, and thereby

giving the occupiers of them an interest in the expenditure of the rate, p. 255.

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to deduct the amount out of their rent.

Receivers in certain cases may be rated as owners.

Persons rated as owners may appeal;

and may vote in vestries.

No owner, not being an occupier, to be rated, in places where the right of voting for members to serve in parliament depends on the rating.

If the tenant is excused, the landlord cannot be rated.

Result, that only visible property can be rated.

which such distress shall be made: provided also, that every occupier who shall pay any such rate or rates, or upon whose goods or chattels the same or any part thereof shall be levied, shall and may deduct the amount of the sum which shall be so paid or levied, out of the rent by him or them payable; and such payment shall be a sufficient discharge to every such occupier for so much of the rent payable by him as he shall have paid, or as shall have been levied on his goods and chattels, of such rate, and for the costs of levying the same.

Sect. 21. Provides, that every person receiving or claiming the rent of any such house, apartment, or dwelling, for his or her own use, or receiving the same for the use of any corporation aggregate, or of any landlord or lessor who shall be a minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which any such house, apartment, or dwelling shall be situated, shall for this purpose be deemed and taken to be and shall be rateable as the owner thereof.

Sect. 22. Provides, that every person to be rated as the owner of any such house, apartment, or dwelling, who shall think himself or herself aggrieved by any such rate, shall have such and the like remedy by appeal against the same as any other person thereby rated; and every person so rated shall be entitled, as an inhabitant of the parish in and for which he shall be assessed, to be present and to vote in every vestry or meeting of the inhabitants thereof for the execution of the laws for the relief of the poor, or for the consideration of any matter or question in relation thereto, in like manner as the inhabitants of the said parish.

Sect. 23. Provides, that nothing in this act contained shall extend to give any power or authority to assess the owner (not being the occupier) of any house, apartment, or dwelling, in any city, borough, or town corporate, in which the right of voting for the election of members to serve in parliament, shall depend upon the assessment of the voter to the poor's rate, or to vary or affect the manner of assessing and charging any of the inhabitants or occupiers of houses, lands, or tenements, within any such city, borough, or town corporate. Similar clause in 2 W. IV. c. 45, s. 50.

Rex v. Hull Dock Company, 3 B. & C. 516; 5 D. & R. 359. This was an appeal by the company against a rate; and one ground stated in the notice was, that the overseers had not rated the lessee of houses, who underlet the same at an improved rent, the occupiers of which had been rated, but excused from payment on account of poverty. Upon this point, during the argument, as reported in *D. & R.*, C. J. Abbott said, "If the principle is established that the landlords are liable to be rated in consequence of the inability of their tenants to pay rates, it will have the effect of depriving poor persons of their habitations, for no landlord will let small tenements to persons of that description if they are to be liable as sureties for their tenants." And again, in giving the judgment of the Court, he said, "As to the question of the lessee, whose under-tenants have been excused from poverty, the point was not very much pressed upon our consideration in the argument, and we think the lessee not liable. The 9 & 10 W. III. (local act) imposes the rate indeed upon the lands, houses, &c. without mentioning either occupier or owner; but as this is a burthen commonly falling on the occupier, we think the owner not compellable to bear it. The owner fixes his rent upon the supposition that this is his tenant's burthen; and without very clear words to show that such was the intention, we think we cannot make the landlord surety for the tenant."

The construction of the general act, 43 Eliz. c. 2, is, that the general term *inhabitant* relates to persons having *visible property* within the parish, and *only to certain particular description of properties*, excluding in general mere *incorporate hereditaments*, unless arising out of real property, especially tolls or stallage. (See the general doctrine *Rex v. The Mersey and Irwell Navigation*, 9 Bar. & Cres. 95; 4 Man. & R. 84, S. C.) And yet, according to principle, every person *ought* to contribute to parochial wants according to his *real ability*; and morally he should do so in the parish from which he receives his income, *unless* such income has already been rated or taxed by an assessment upon land or other property, or the lands of an occupier, in which case,

by the necessary reduction of rent, the landlord is in effect the person assessed. It has therefore been held a valid custom to rate all persons in a parish according to their *apparent ability*, without regard to visible property in their possession. *Nightingale v. Marshall*, 2 Bar. & Cres. 313; 3 D. & R. 549, S. C. In order to enforce a more comprehensive rating, modern local acts sometimes expressly render rateable all property, such as *hereditaments*, (a term not in 43 Eliz.) &c. *enjoyed*. See *post*, tit. "*Rating under Local Act*."

By the 43 Eliz., besides the inhabitants, "the parson, vicar, and occupier of lands, houses, tithes impropriate, proprietor of tithes, coal mines, and saleable underwoods," are to be taxed.

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1. LAND, HOUSES, &c. (a)

The first kind of *real property* named in the 43 Eliz. c. 2, s. 1 (*ante*, 103), to be taxed to the relief of the poor, is "*land and houses*."

"All things which are real and in yearly revenue must be taxed to the poor." Resolution of the judges of assize in 1633.—*Dalt. F.* 235.

6. *What Property is rateable.*

1. *Land, Houses, &c.*

(a) *Lands, houses, &c.* The occupiers of lands, whether for pleasure or for the ordinary purposes of cultivation, and the occupiers of houses, &c., are liable to be rated by reason of their occupancy, whether they derive any real profit from the occupancy or not. (*Rex v. Hull Dock Company*, 5 M. & S. 394; *The King v. Attwood*, 6 B. & C. 297; 9 D. & R. 328, S. C.) And if the annual value of the land or house be enhanced by any collateral circumstances, as by a mineral spring being upon the land (*Rex v. Miller*, *Cowp.* 619; 1 Bott, 155), by a spring of plain water being upon it (*Rex v. New River Company*, 1 M. & S. 503; Bott, *cont.* 96), by a dock being erected upon it (*Rex v. Hull Dock Company*, 1 T. R. 219; 1 Bott, 171), by water-works being erected upon it (*Atkins v. Davis*, *Cald.* 315; *Rex v. Mayor, &c. of Bath*, 14 East, 609; Bott, *cont.* 91), or by the main pipes from water-works or gas being laid in it (*Rex v. Rochdale Water-works Company*, 1 M. & S. 634; Bott, *cont.* 106; *Rex v. Mayor, &c. of Bath*, 14 East, 609; *Rex v. Brighton*, 5 B. & C. 466; 8 D. & R. 308, S. C.), or by a river navigation passing over it (*Rex v. Milton*, 3 B. & A. 112), or by a canal passing over it (see *Rex v. Calder, &c. Company*, 1 B. & A. 263; *Rex v. Grand Junction Canal Company*, 1 B. & A. 289, and *post*), or by a barge-way or towing-path running over it (*Rex v. The Mayor, &c. of London*, 4 T. R.

21; 1 Bott, 196), or by gas-works being erected upon it (see *Rex v. Birmingham Gas Light Company*, 2 D. & R. 735; 1 B. & C. 506, S. C.; 1 Dowl. & Ryl. Mag. Ca. 385; 5 B. & C. 308), or by lime-works (*Rex v. Alderbury*, 1 East, 534), slate-works (*Rex v. Woodland*, 2 East, 164), or a potter's clay-pit (*Rex v. Brown*, 1 East, 528), being upon it, or by the steel-yard of a weighing machine (*Rex v. St. Nicholas, Gloucester, Cald.* 262; 1 Bott, 163), or a carding machine (*Rex v. Hogg*, *Cald.* 266; 1 T. R. 721; 1 Bott, 177), or the like, being erected in a house upon it, or where a building is let to be used as a canteen (*Rex v. Bradford*, 4 M. & S. 317); in all these cases the land or house is liable to be rated according to its value thus improved, (see *Rex v. The Birmingham Gas-light Company*, 2 D. & R. 735; 1 B. & C. 506), unless otherwise provided by some act of parliament. (See *Rex v. Calder, &c. Company*, 1 B. & A. 263; *Rex v. Grand Junction Canal Company*, 1 B. & A. 289.) But lands converted into drains merely for the purpose of draining other lands which were out of the parish, and from which the commissioners of the drainage derived no profit or pecuniary advantage whatever, were holden not liable to be rated. (*Rex v. Sculcoates*, 12 East, 40; Bott, *cont.* 72.) So a corporation seised of lands used as common lands by the burgesses (*Rex v.*

1. *Land, Houses, &c.*

"Land hath in its legal significations an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad cælum*, is the maxim of the law, upwards; and downwards, whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface. The word 'land' includes not only the face of the earth, but every thing under it or over it."—2 *Bla. Com.* 18.

This is the legal signification of "land," when it is used by itself; but when it is accompanied with other words, which can have no meaning, if the word is understood in its general sense, then there is reason for taking the word in a less comprehensive sense, as in a grant of "lands, meadows, and pastures;" the former word means any "arable lands." (*Barton Com.* 194.) So here, if land is used in its general sense, no effect can be given to the words "houses, woods, or coal mines;" and on the contrary, land in such sense would comprehend *all* woods, and *all* mines, and make that rateable which, by repeated decisions, have been held not to be included in the statute.

2. CANALS.

2. Canals.

Where a river navigation extended through several parishes, and certain tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf locally situate within the parish of B.: Held, that a rate on the proprietor of those

The occupier of land covered by water is rateable.

Rex v. Milton, 3 B. & A. 112. *Milton* was rated for "river tonnage."

Case:—The appellant was a tenant of part of the navigation of the river *Avon*, called the "Lower Navigation," which runs through the counties of *Worcester* and *Gloucester*, from the lock above the bridge at *Evesham* to the junction of the *Avon* with the *Severn* at *Tewkesbury*. The conveyance under which Mr. *Perrott's* family held this property conveyed to them "all that the navigation and profits of navigation, and passage for boats, upon the *Avon*, situate in the counties of *Worcester*, *Warwick*, and *Gloucester*, to and from the *Severn*, up and down the *Avon*, unto and from the lock and sluice next above the bridge at *Evesham*: and also all storehouses, sluices, locks, &c., belonging to the river *Avon*, and the navigation thereupon to and from the *Severn*, up and down

Watson, 5 East, 480; 1 *Bott*, 237), or in whom the aftermath of certain lands was vested as trustees for the burgesses (*Rex v. Trustees of Tewkesbury*, 13 East, 155; *Bott*, cont. 86), were holden to be rateable for them. And where a farmer let his cows (depastured on his own lands) to a tenant at a certain rent per cow, it was holden that neither the farmer nor the dairyman was rateable for the profits arising from the dairy. (*Rex v. Brown*, 8 East, 528; *Bott*, cont. 59.) So a person having the exclusive use of a way (7 T. R. 598; 1 *Bott*, 218), and not merely the right of way over the land of another (*Rex v. Joliffe*, 2 T. R. 90; 1 *Bott*, 181; 9 B. & C. 827; 4 Man. & R. 734, S. C.), is, it seems, rateable for it. So for the fishings of a river, if connected with any right to the soil, the lessee is rateable. (*Rex v. Ellis*, 1 M. & S. 652; *Bott*, cont. 107.) But the lord of a manor is not rateable for the quit rents and casual profits of the manor (*Rex v. Vandewall*, 2 Burr. 991. See *Carth.* 14, *Comb.* 264); for in that case the property would be twice rated, in the hands of the landlord and in the hands of the tenant. (*Rex v. Alderbury*, 1 East, 534.) Tolls are not rateable *per se* (*Rex v. Eyre*, 12 East, 416); but are rateable only when connected with real

and substantial property, situate within the parish, and yielding profit there, *id. ibid.* So as of a ferry (*Rex v. Nicholson*, 12 East, 330; *Williams v. Jones*, 12 East, 346; *Bott*, cont. 83; *Rex v. Bell*, 5 M. & S. 221); but when tolls are connected with a towing-path or toll-gate (*Rex v. Mayor, &c. of London*, 4 T. R. 21; 1 *Bott*, 196), or with the lock of a canal (*Rex v. Macdonald*, 12 East, 324; *Bott*, cont. 75), or with a sluice upon a navigable river (*Rex v. Cardington*, 2 Cowp. 581; 1 *Bott*, 154; *Rex v. Salter's Load Sluice*, 4 T. R. 730; 1 *Bott*, 201,) they are rateable. Lands or houses in the possession of the crown, or of the public, are not rateable (*Lord Amherst v. Lord Sommers*, 2 T. R. 372; 1 *Bott*, 184); nor are persons residing upon them merely as the servants of the crown rateable for them. (*Rex v. Terrott*, 3 East, 506; 1 *Bott*, 230.) But persons allowed to occupy them beneficially may be rated for such part as they appropriate separately to their own use. (*Old Windsor v. Matthews*, *Cald.* 1; 1 *Bott*, 151; *Lord Bute v. Grindall*, 1 T. R. 338; 1 *Bott*, 173; *Rex v. Hurdis*, 3 T. R. 497; 1 *Bott*, 187; *Rex v. Terrott*, 3 East, 506; 1 *Bott*, 230.)

the *Avon*, unto and from the lock and sluice next above the bridge at *Evesham*, together with all the tolls, rates of tonnage, &c., to the navigation belonging." By the 24 Geo. II., 1751, "An Act for the regulating the navigation of the river *Avon*, and for ascertaining the rates of water-carriage," it was enacted, "that the river *Avon* shall be a free river, and all persons shall have liberty of passing down the river with boats laden with goods, paying the proprietors of the navigation certain rates of tonnage." The appellant was not an inhabitant or occupier of any messuage or tenement in *Bengworth*, but he resided in the parish of *All Saints, Evesham*, in which parish part of the river was, and which was used by vessels passing along the river. In *Bengworth* was a wharf communicating with the river, belonging to one *Day*, where goods were landed annually, yielding tonnage dues to the amount in the rate assessed; but no tonnage dues were received by the appellant in *Bengworth*, nor any account given of them in that parish; but, as a check upon the boatmen, an account was taken at the wharf by *Day's* servant of all the goods landed there, which was sent over to the appellant at his house in *Evesham*, where the boatmen accounted to him; and he usually received tonnage dues on goods in *Evesham*, but sometimes at *Pershore*; there was no lock within *Bengworth*, and when the tonnage dues were paid at *Evesham*, the boatman took back with him a certificate from the appellant of his having paid the dues at *Evesham*, in order to enable him to repass the sluice through which he came up loaded, which was situate at *Pershore*, and which was kept locked. The same amount of tonnage was payable by every vessel which passed *Pershore* sluice in its way to *Evesham* or *Bengworth*, whether it proceeded as high as either of those places, or unloaded and delivered at any intermediate place, which was frequently the case, and which distance included eight different parishes where goods might be landed. *Abbott, C. J.* "I am of opinion that this rate, which has been made on the river tonnage, cannot be sustained. It has been contended, that by the words 'river tonnage,' we may understand the profits arising only from that part of the river which lies within the parish of *Bengworth*. It seems to me, however, that we cannot so understand those words, for they are explained to us by the subsequent facts stated in the case. From these facts it clearly appears that the profits accrued in respect, not only of the use of that part of the navigation which was within the parish of *Bengworth*, but also from the use of the other parts of the navigation, situate in the different parishes through which the goods had passed. This is, therefore, in substance, not a rate upon the profits of that part of the river only which is situated within the parish of *Bengworth*, but a rate upon the tonnage dues payable at the wharf there, in respect of the carriage of the goods through the other parishes. Unless, therefore, we are to supersede all the late cases by which it has been held that tolls *per se* are not rateable, we are bound to say that these tonnage dues are not subject to this rate." *Bayley, J.*, "Since *Rex v. Nicholson*, the court have held themselves bound to see clearly that the property rated comes within the words of the 43 Eliz., by which the rate is directed to be 'by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods, in the parish.' Now the party here, not being an inhabitant, must be brought within some of the other words, and the only other words applicable to this case are, 'occupier of lands.' *Rex v. The Aire and Calder Navigation*, and *Rex v. Page*, certainly do not admit of that distinction. In *Rex v. Nicholson* those decisions, however, were expressly overruled by this court. In *Rex v. Macdonald* the rate was for the *Rochdale Canal Lock Tunnel* dues or rates. Now, if those dues or rates had arisen from property partly within the parish and partly without, it would have been like the present case. The only dues which the party was entitled to receive in that case were dues in respect of vessels passing through the lock, which lock lay within the parish: and, therefore, all the tolls and dues there, arose from what may be called parish property. The rate in this case is for tonnage dues, and it would be a good rate, provided it could be shown that the tonnage arose wholly from the use of rateable property within the parish. It is stated, however, that the canal

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dues for their whole amount in the parish of B., stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of B., but as a rate upon the parts of the river situate as well within as without the parish, and that it could not therefore be supported: Held also, that stat. 41 G. 3, (U. K.) c. 23, s. 1, does not give the Court of K. B. the power of amending a poor rate.

Tonnage dues, like tolls, are not rateable *per se*.

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passes through several parishes. The tolls, therefore, which are collected for goods landed at the wharf in the parish of *Bengworth*, are payable to the proprietor as a compensation for the use of the whole line of the canal through which the goods pass, and not merely for the use of that part of the canal which lies within the parish of *Bengworth*. It is a rate, therefore, upon profits arising partly within and partly without the parish; and upon that ground, I think that the rate cannot be supported; and if it cannot, the case of *Rex v. The Mayor of Bath* is an authority to show that the rate must be quashed. This is not a mere objection to the *quantum* of the rate." *Holroyd, J.* "It is now to be considered as an established rule, that tolls *qua* tolls are not rateable. I do not mean to say, however, that a rate may not be made on rateable property under the denomination of tolls, provided that the property from which the tolls arise be within the parish, and the rate be confined to that property. Here the rate is upon tonnage-dues. It is said that the property rated is rateable property within the parish where the tonnage-dues became payable, and that, therefore, this is to be considered as a rate upon that rateable property. I think, however, that this is a rate, not only on rateable property within the parish, but on other property, which, though rateable, is rateable in another parish, and not in this. The case states, that within the parish there is a wharf, communicating with the river, where goods to the amount assessed are annually landed. It must be taken, therefore, that the rate was made upon *all* those tonnage-dues. It is also stated, that part of the navigation lies in other parishes, in the passage through which the tonnage-dues arise, as well as for the passage through the part of the river which lies within the parish. Now, if the rate on the tonnage-dues be, in fact, a rate on the rateable property, that is, on the whole part of the navigation, in respect of which those dues are payable, it must be considered as a rate upon the profits arising, not only from that part of the navigation which is within the parish, but from that also which is not within the parish. The objection, therefore, is not merely to the *quantum*, but to the rate itself, viz. that it is a rate upon property without as well as within the parish. I think, therefore, that this rate is bad." *Best, J.* "The only mode by which the tolls of a canal become rateable is by rating the land itself, or that part of the land occupied by the canal, which is locally situate within the parish; the tolls then are the profits arising from that part of the land; and the statute of Elizabeth authorizes the rating of such property locally situate within the parish: but it does not authorize the rating of property not situate within the parish. I think that the rate here is upon property partly within and partly without the parish, and that it is, therefore, bad; and that, being so, I think the order of sessions ought to be quashed."

Tolls are not rateable *per se*, but *contra*, when mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there.

Rex v. Sir A. Macdonald, 12 *East*, 324. Case:—The property was described in the assessment as *the Rochdale canal, lock, tunnel, dues or rates*; and certain warehouses were named; and the assessment was made upon Sir *Archibald Macdonald* (and others), trustees of the late Duke of *Bridgewater*. The appellants are not inhabitants of Manchester, but are in the receipt of the tonnage in respect of vessels passing through the lock built upon the Rochdale canal, under the 34 Geo. III. The 2d section reciting, that "whereas the Duke of *Bridgewater* hath expended a considerable sum in making wharfs for the convenience of the public near his canal at Manchester, and when the proposed junction is made with his canal, the profits of the Duke arising from his wharfs will be considerably diminished; he nevertheless consents to such junction on being authorized to build a lock upon the Rochdale canal, near the junction, and to collect rates as a compensation," authorizes the Duke, &c. at his expense, to build a lock upon the Rochdale canal, at Castle Field, &c. and to take at the said lock for his benefit the following rates, viz. (naming rates for goods carried from the Rochdale canal to the dock,) which rates shall be paid at or near the lock to the duke, &c. The lock was built in pursuance of this act. The tonnage amount to as much as is charged in the assessment. The appellants *did and do still occupy* the lock and warehouses and wharfs. No inhabitants of Manchester or other persons were rated in respect of their personal property in the township.

There were owners of annual chief or ground rents payable from lands in Manchester, and the owners were also inhabitants, but not rated in respect of these rents. Lord *Ellenborough*, C. J. "The question stands on the rateability of the property of the trustees. The case states that they are the occupiers of *the lock*, and of the several wharfs and warehouses mentioned in the rate; and it is not disputed that the property rated yields profit; but it is objected that they are rated for *dues* or *rates*, that is, for the tolls payable at the lock under the act of parliament; and that the court have held tolls not to be rateable. But the court have only said that tolls are not rateable *per se*, but only when connected and rated conjunctively with real and substantial property, situated in the parish; which, as yielding profit there by means of the tolls, is the proper subject of rating within the act of Elizabeth. Now here the lock itself is rated, which is something real and substantial, locally situated in the township, and producing profit; and the addition of the *dues* or *rates* is merely giving other names for the same thing. These dues or rates are given by the act of parliament as a compensation to the Duke of *Bridgewater*, for the loss of his profits of certain wharfs adjoining to his canal at Manchester; which wharfs were before clearly rateable in respect of those profits: the rates, therefore, made payable at the lock were substituted as a compensation for and in lieu of the wharfage before enjoyed: they are the substituted medium of profit arising, as the act describes, from those wharfs. The court, therefore, by this decision, will not break in upon that which they have recently decided, that tolls *per se*, and when not mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there, are not liable to be rated. The other judges concurring, the rate and order of sessions were confirmed.

Rex v. Cardington, 2 Cowp. 581. Case:—*A. Palmer*, Esq. was seised in fee of the right of navigation of that part of the river Ouse, which lies between Erith, in Huntingdon, and the town of Bedford, and of all the tolls arising from the carriage of goods upon that part; he had power to erect sluices and staunches for keeping up the water, tolls were paid for passing every sluice, and in a different rate for different sluices: one sluice was erected in the parish of Cardington, at which the toll was 3d. a chaldron: Mr. *Palmer* did not reside in Cardington, nor was any person resident at that sluice to receive the tolls; the tolls for that sluice were received at Barford or Eaton; neither Mr. *Palmer*, nor any former proprietor of that navigation, were assessed to the poor rates for their sluices or for the tolls, but they had for many years been assessed to the land tax. The court ordered it to stand over, that inquiry might be made as to the custom of rating this description of property in other places. In answer to the inquiries, it was returned, that out of fourteen sluices, being the whole number erected upon this navigation, one only was rated to the poor; that the river Ivel, near Bury, the Northampton river, Larke, Ouse, and Stower, were none of them taxed. The tolls at Marlow, Oxford, Reading, and several others on the river Thames, were all rated to the poor. Upon the whole, the court was of opinion that these tolls were rateable.

Tolls taken upon a river for passing a sluice are rateable.

Custom of rating.

The proprietors are rateable in each parish for the profits earned by the canal there; see "*Proportion*," *post*; unless by the Canal Act there is a special exemption. See "*Exemption from Rate*," *post*.

3. PIPES.

Occupiers of land by means of pipes are rateable.

Rex v. Brighton Gas Company, 5 B. & C. 466; 8 D. & R. 308; 4 D. & R. Mag. Ca. 60. The company was established by act of parliament for lighting Brighton with gas. The buildings and manufactory are in the parish of Rottingdean, the mains or pipes, forming the subject of appeal, are placed in the ground in the parish of Brighton, where the gas is sold and consumed; the company being authorized, with the consent of certain commissioners to open the ground in the streets of Brighton. The mains or pipes were assessed at 40*l.* per annum, being a ninth part of the estimated value of 360*l.*, that

The company are rateable as occupiers of the land wherein their mains and pipes are laid, for the entire profits of that land, part of them arising from such pipes so laid therein.

3. Pipes.

being the proportion in which other rateable property is there rated. Personal property is not rated in Brighton. The mains and pipes were worth 360*l.* a year at the least, to any person who could use them for the purpose for which they were laid down. *Bayley, J.* "The only question is, whether the company can be deemed occupiers of land, and to the extent to which they are rated. If it were doubtful in this case, whether the pipes constituted part of the freehold, the company would, at all events, be liable to be rated for an occupation way; but I think that we may collect from the case that the pipes are fixed in the soil; and if so, then *Rex v. The Corporation of Bath* establishes that they are to be deemed occupiers of that land in which the pipes are fixed. *Rex v. The Rochdale Water Works Company (infra)*, and *Rex v. The Birmingham Gas Light Company* establish the same principle. In the case of a canal the proprietors are rateable, not only in the parish where the tolls are collected, but in each parish where they occupy land for that purpose. In many acts of parliament, authorizing the making of a canal, it is provided that the company shall not be rated at a higher rate than the adjoining land; but if there be no such provision, then they must be rated in respect of the value which the land has acquired from its having been used for the purposes of the canal. There is no such provision in this case; and as the pipes are laid down so as to become part and parcel of the land for the time they remain, they thereby improve the value of the land, in the same manner as buildings erected upon the land, and the whole must be rated accordingly. I entertained some doubt at one time whether the right of the company to remove the pipes might not prevent their being rateable in respect of the increased value of the land; but upon reflection it appears to me that that makes no difference, because they must be rateable upon the same principles as buildings are which may be removed at the end of the term. There are cases which in principle are similar to the present. Thus a person who had the exclusive occupation of a waggon way, and not a mere right of passage, has been held to be rateable. Upon these grounds I am of opinion that the property is rateable. Secondly, that it is rateable to the extent of the value of that which, for the time, constitutes part of the freehold. Thirdly, I am of opinion that the rate is properly made in Brighton, and not in Rottingdean, because the rate must be upon the land occupied by the company, and here the land occupied is in the parish of Brighton." *Holroyd, J.* "The first point is decided by many cases which are similar in principle to the present." [He then referred to *Rex v. St. Nicholas, Gloucester*, and *Rex v. Hogg, post.*] "I think, therefore, that so long as the company use the land for the purpose of their pipes, they are rateable, for they have the exclusive occupation of that part of the land in which their pipes lie; and that they are rateable for the entire profits of that land, part of them arising from the gas pipes placed in the land." *Little-dale, J.* "The rate must be upon the land. Here the pipes being fixed to the land, the land and pipes are to be considered as one thing. The only difficulty in the case is, whether the company are to be considered as occupiers of land. They are authorized, with the consent of the commissioners, to break the soil for the purpose of laying their pipes. Now in *Dyson v. Collick*, 5 B. & A. 600, it was held that the contractors for making a navigable canal, having, with the permission of the owner of the soil, erected a dam of earth and wood upon his close, across a stream there, for the purpose of completing their works, had a possession sufficient to entitle them to maintain trespass against a wrong doer. This is an authority to show that the company were virtually in the occupation of this land, and being in the exclusive occupation of that portion of land in which their pipes lay, they are rateable within the principle laid down in *Rex v. The Corporation of Bath*, and *Rex v. The Rochdale Waterworks Company.*"

A company was empowered to lay under ground through the streets of a town main pipes for the conveyance of water;

Rex v. Rochdale Waterworks Company, 1 M. & S. 634. The proprietors of Rochdale Waterworks were rated in the township of Spotland for pipes for the conveyance of water belonging to the company, and being fixed in the ground in the township, and the profits arising therefrom within the township. By 49 Geo. III. intituled, "An Act for the better supplying the

Inhabitants of the Town of Rochdale and the neighbourhood with Water," the appellants are empowered to lay under ground, along the streets and highways, in the township of Spotland, main pipes for the conveyance of water; and authorizes the inhabitants of the township, with the consent of the company, to lay down pipes, communicating with such main pipes, to their respective houses, paying to the company rates for such privilege and water. In pursuance of this act, main pipes and branches are laid and used in the township, and divers of the inhabitants pay rates to the said company. The company were assessed for the pipes. Lord *Ellenborough*, "Whether the occupiers of the houses are or are not rateable in respect of the advantages derived to them from the use of these collateral pipes, does not affect the present question. The question here is, whether the company, as occupiers of the main pipes, are rateable? What difference does it make whether it be a reservoir of so many feet square, or a pipe of so many inches in diameter? I own I cannot distinguish this case from *Rex v. The Corporation of Bath*." *Le Blanc*, J. "If this rate on the company had been simply on the leaders which carry the water to each house, the argument might have been of weight; but the rate is imposed in respect of the main pipes and the profits arising from them." Rate confirmed.

Rex v. Chelsea Waterworks Company, 5 Bar. & Adol. 156; 2 Nev. & M. 765, S. C. Part of the pipes, reservoir, &c. belonging to this company are situate in the Green Park, and are laid in the ground for the conveyance of water to persons paying the company for the same. The herbage growing on the surface, including that under which the pipes pass, is rated in the hands of the ranger of the park. The reservoir is situated in the Green Park, and was formerly a pond. It communicates with the pipes and with the water trunks, and forms part of the company's works. In 1725 permission was given to the company by a warrant from the king to use the pond and the park as a reservoir, and to dig the ground for laying pipes. Under this warrant the company have ever since used the pond, and have made the reservoir, and laid the pipes in the Green Park, and have conveyed water into the reservoir, and through it in its progress to the houses they supply. The tanks are a part of the reservoir. About two years ago, when improvements were made in that vicinity, the company were required by the crown to cleanse and reconstruct the reservoir, and to brick the sides and bottom, which they did under the superintendence of the crown surveyor; at the same time they erected other works for cleansing the surface of the water while in the reservoir, and keeping it at a proper level. The company have no interest in the basin, or in the soil, other than is conveyed by the royal warrant, nor do they occupy it further than as above stated. The use of it is not essential to their purposes, but it is beneficial to them by enabling them to charge their main pipes without working their engines at the head of their works, (a) and the company are by this means better enabled to use the engines when they think proper for the supply of other districts than those communicating with the reservoir, and for other purposes, and in particular, it may be useful in case of fire. The fish in the reservoir have been taken by the deputy ranger, the company not objecting; and the company have been always restrained from making alterations in or doing repairs to the basin, unless by the express permission of the crown surveyor, and under his inspection. They pay no rent, and are paid for supplying the palace. The question was, whether any of the works in the Green Park were rateable. *Cur. adv. vult.* *Denman*, C. J. "With respect to the pipes laid in the park it was admitted by the learned counsel for the appellants, that unless he could distinguish this case from those in which it was decided that pipes of similar companies laid in the streets were rateable, the rate in the present instance in that respect must be confirmed. The ground of distinction was, that here another person was rated for the surface of the land under which the pipes were placed. But we are clearly of opinion that this makes no difference. That part of the soil which the company occupied was not included in that rate. Upon this question the

3. *Pipes.*

Held, that the company were rateable to the poor in the parish where the main pipes lay.

A company, who occupy lands by their pipes, is rateable, although another person is rated for the herbage of the surface.

A warrant from the Crown to use a pond in a royal park, for limited purposes, and as tenants at will, gives the grantee an interest in the soil, which makes him rateable.

(a) The water is brought from the Thames. See the act 8 Geo. I. c. 26.

3. Pipes.

court expressed a clear opinion in the course of the argument. The only reason for deferring our judgment was, that we might have an opportunity of more attentively considering the effect of the royal warrant under which the reservoirs were made. We have done so, and we are of opinion that it gave to the company as much interest in the space where their reservoirs are made as in that where the pipes are laid. It is impossible to distinguish one from the other. Their interest, indeed, in the former is expressly, in the latter by implication at will only; but a tenant at will is, until the will be determined, an occupier of the land; and as the company are, on the authority of the decided cases, the occupiers of the land filled by the pipes, they must be considered as the occupiers of that where the reservoirs are constructed. They appear to us to have the exclusive right in a portion of the soil in both cases, though for a limited purpose only." Rate confirmed.

4. OCCUPATION.

4. Occupation.

It is necessary to distinguish between an *easement*, and an *interest* in the soil. The grantee of the former is not rateable. A power given by statute to render a river navigable, does not necessarily give the undertaker any interest in the soil, except in the land which they purchase. So also the grant of a right of way, of a right of common, of the privilege, not exclusive, of taking stone from the quarry, does not constitute the grantee an occupier. In all such cases the person in possession of the land is deemed the occupier, and liable to be rated for the value of the land increased by the use of it.

Exclusive Occupation.—Criterion of Easement or Interest in Land.

Rex v. Trent and Mersey Navigation Company, 4 B. & C. 57; 6 D. & R. 47, in which case the proprietors of certain limestone quarries agreed to deliver to a canal company, yearly, such quantities of good limestone as the latter should direct, at the rate of 7*d.* per ton, and if they should at any time neglect to deliver the quantities required, it should be lawful for the company to enter upon the lands, or limestone quarries, of any of the proprietors, and to take such quantities of limestone as they should think proper, paying 2*d.* per ton. The proprietors having failed to make the supply, the company entered, and worked the quarries for more than twenty years, according to the contract, and they were, therefore, rated as occupiers; and the sessions confirmed the rate on appeal. *Abbott, C. J.*, having adverted to the fact, that no one besides the company had got stone from the quarries, since they first entered to work them for themselves, proceeded—"But the right of the company was merely to get there what stone they might think fit: there was nothing in the contract to prevent the owner from giving to others also the privilege of getting stone in the same quarry. The company, therefore, had not the sole and *exclusive occupation*, but a *mere privilege*, and consequently were not liable to be rated to the relief of the poor." Order of sessions quashed.

5. DOCKS, CANAL TOLLS, &c.5. Docks, canal
tolls, &c.

The great benefit resulting to commerce, and the consequent promotion of the national prosperity, from the establishment of docks, and of internal navigation by means of canals, does not exempt lands and buildings devoted to these purposes from the poor's rate, wherever they are the property of individuals or companies who derive an immediate profit from them by means of dues, tolls, &c. If, however, the entire funds thus raised are destined exclusively to the repayment of the original outlay, and the necessary expenditure in keeping the works in a proper condition, then there are no *beneficial* occupiers within the meaning of the statute, and in such circumstances the poor's rate cannot be demanded.

It is now settled that only such occupiers as have an *exclusive occupation* of

land, whether covered with water or not, so as to enable them to maintain an action of *trespass*, in respect of any injury done to the land, are rateable as occupiers of such land. Where, therefore, the occupancy amounts to no more than an *easement* in the soil of another, as in the case of trustees of turnpike roads or navigable rivers, they are not rateable as *occupiers* of the lands over which such roads or rivers pass, although they are authorized by act of parliament to keep the former in repair, and cleanse, scour, open, enlarge, and remove all obstructions to the navigation of the latter, and to receive tolls or dues from those passing along the same. But if such trustees make additional cuts or canals upon lands purchased by them, and erect locks, sluices, or other works for the more profitable enjoyment thereof, then, according to all the authorities, they are rateable in respect of the occupation of such cuts, locks, wears, drains, &c., although the profits are earned chiefly by the passing along the navigable river. (*Steer's Par. L.* 409.)

Rex v. The Mersey and Irwell Navigation Company, 9 B. & C. 95; 4 Man. & R. 84, S. C. By 7 Geo. I., certain persons, therein nominated undertakers, were authorized, at their own cost, to make the rivers *Mersey* and *Irwell* navigable from *Liverpool* to *Manchester*, and to maintain such navigation; and for those purposes to open, scour, enlarge, or straighten the said rivers, and to dig or cut the banks thereof; and to make any new cuts, trenches, or passages for water in the adjoining lands, as should be necessary for the navigation of boats and other vessels, and if necessary, to cut and remove trees, gravel beds, &c., which might hinder the navigation; and to erect bridges, sluices, locks, &c., as should be necessary where they should think fit, and to turn any highways, and make towing paths near the rivers, and do all other things necessary for the maintenance and improvement of the navigation of the said rivers, first giving satisfaction to the owners of property taken or destroyed for the purposes of the act. In consideration thereof, the undertakers and no others were to take certain tolls *for their own proper use and behoof*; and that the said rivers should for ever thereafter be deemed navigable from *L.* to *M.*, and that all the king's subjects with their goods, &c., might have free passage thereon, with boats and other vessels, &c., without hindrance, paying such rates or duties as were appointed by the act. The company was incorporated by 4 Geo. III. The sessions held that the company were rateable for the whole line of navigation within the township to which they were in this instance assessed, in respect of the land *taken and used by them for the Mersey and Irwell Navigation*, the towing-paths, wears, locks, cuts and sluices, and assessed the annual value of the profits at 2,600*l.*, and ordered the rate to be reduced accordingly, being of opinion that the amount of the tonnage as originally stated in the rate (2,908*l.* 7*s.* 6*d.*) was overvalued. Lord *Tenterden*, C. J., "I am of opinion that the company of proprietors are not rateable for the ancient bed of the navigable part of the river; and inasmuch as the rate, which the sessions have affirmed, is made on them as occupiers of that part of the navigable ancient bed of the river which is situate in the township of *Barton-upon-Irwell*, the order of sessions must be quashed. It does not follow, however, that the whole rate ought to be quashed by this court, even on these proprietors, much less the whole rate on the whole parish. Some matters there are which, according to the present state of the case, appear to be rateable; such as the new cuts, which are made through the soil of which the proprietors were actual purchasers. They must be considered, in respect of those cuts, in the same light as the proprietors of any ordinary canal. So of the locks: and the only question will be as to the amount. I say nothing about the towing paths; for there seems to be some question whether the facts as to the length of those in the township are correctly stated. But inasmuch as there is one sum now applied to a subject for which the company are not rateable, joined with a subject-matter for which I think they are rateable, the inclination of my mind is to quash the order of sessions, and send the case to them that they may rate such parts as are rateable according to their own judgment, if they can come to any proper conclusion upon the question." Bayley, J. "When this question was first presented to my consideration in *Rex v. Thomas*, it struck me that the company were

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Authority given by act of parliament to a company to make a river navigable, and to build bridges, sluices, locks, &c.; and in consideration thereof to levy certain tolls, gives them no more than an *easement* in the river. They cannot, therefore, be rated as *occupiers* of the river, though they are rateable for the locks, &c.

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liable to be rated in respect of the navigation and the other property; but on further consideration, I think that with reference to the navigation, viz. the navigable bed of the river, I was wrong. In order to make them rateable, they must be within the words of the 43 Eliz. 'occupiers of land or houses,' and it struck me at first, that inasmuch as they had a right to have the bed and banks of the river upheld, to hold the water, which water they were to use, they might, perhaps, be called the occupiers of that land which was so covered with water, and which held the water so afterwards to be used. But when, after considering the subject, I find that they can maintain no description of action which an occupier is capable of maintaining, I am now disposed to think that the correct view of the case is not that they are occupiers of the land covered with water, but that they had an easement only in the land. Where the proprietors of a canal purchase the land, and are themselves owners of the soil, they are rateable, on the principle that they are the occupiers of the soil which belongs to them; but in this case, the soil, as far as we can form any judgment, does not belong to this company. They have only a qualified right to use the land, to deepen the channel of the river, and make the soil fit for the purpose of holding the water, which water they are afterwards to use; but subject to the right of navigation being vested in them, and subject to the right they have that the soil shall continue to hold the water in which the navigation is to take place, the soil remains in the ownership and occupation of those persons to whom that soil originally belonged. When the company make cuts under the powers of the act of parliament, which authorizes them to buy the land for the purpose of making these cuts, they are, with reference to those cuts, proprietors and occupiers of land, and therefore rateable in respect of that land. As they have a right also to erect wears, and dams, and locks, those wears, and dams, and locks, being on their own land, become their own real property; and they are the occupiers of that land on which those wears, dams, and locks, respectively are, and they are therefore rateable in respect of them. But, for the reasons I have given, (which I have thought right to state, having, on a former occasion, expressed an opinion that the navigation was rateable,) I am of opinion that they are not liable to be rated for the navigation. It seems to me, therefore, that the proper course is to send the rate down to the session for amendment. For, if the rate be quashed, this consequence will ensue; namely, that a rate will be levied in respect of a bygone time, and the former overseers of the parish will be reimbursed by rates to be levied, not on the persons who were occupiers at the time when the expenditure took place, but by a rate on those persons who have become occupiers since that time. For these reasons I think the case ought to go back to the sessions, that they may rate those parts of this property which ought to be rated." *Littledale, J.* "I am entirely of the same opinion, that the principal subject of this rate, viz. the navigation, is not rateable, and I think the case ought to go back to the sessions to have the rate amended. The inconvenience mentioned by my brother *Bayley*, would certainly arise if the rate were quashed entirely; but for that, I should have thought it more convenient that this part of the rate should have been quashed altogether. It seems to me there may be some difficulty, but we have nothing to do with that, in ascertaining how those locks and towing paths are to be rated. The rate is an entire rate on the whole profits, and I do not see how it is possible to say how much a lock or a towing path produces. Suppose they were to make 2000*l.* annual tolls, how can it be ascertained what proportion of that sum is contributed by the locks and towing paths. That, however, is a question for the sessions." *Parke, J.* "I agree with the rest of the court, in thinking that the order of sessions should be quashed. The question has been argued with much ability, and at last is reduced to a very simple point, namely, whether we can pronounce that these defendants are, on this finding, 'occupiers of lands.' If they are occupiers of lands, they are rateable; if they are not occupiers of lands, they are not rateable. Many of the early cases of rateability seem to have proceeded upon a disposition of the court, (pardonable, but, perhaps, not strictly correct,) to extend the operation of the statute of Elizabeth, so as to include as large

a fund as possible in the rate. The law on this subject was at length settled in *Williams v. Jones*, 12 East, 346. It is clear, from that case, that no one can be rated unless he be an inhabitant or occupier, and these defendants are not inhabitants. The question then is, whether they are occupiers of land? If they have a mere easement they are not rateable. Persons who have a right of common, a right of way-leave, or a right of ferry, are not rateable. This subject-matter of rate cannot be well distinguished from the case of a ferry, from which the owner of the ferry derives a particular benefit, and from the use of which the public also derive a benefit. In *Williams v. Jones*, the owner of the ferry had repaired the landing-place, which was parcel of a highway on the bank of the river, and had a post fixed in the ground there, to which the boats were usually moored, and yet he was held not to be the occupier of the highway, though he had a special power and privilege as to a part of it. Now in this case it is quite clear that as to the bed of the river, this company had only a special power; they had not the exclusive occupation of any part of it. It seems to me, therefore, they are not rateable for the bed of the river. No person can be an occupier unless he has the exclusive right to enjoy some portion of the soil. It will be found that that obtains in the case of the gas companies. There the companies who have gas pipes have the exclusive right to enjoy a portion of the soil; they have the exclusive right of occupying, by means of these pipes, that portion of the soil in which the main is. But in this case the company have no exclusive right to occupy any part of the soil of the bed of the river. As to the locks, if it shall appear that the property of the soil (where the locks are made) is in the company, they will be rateable. As to the cuts made at the outset of the navigation, (the property being in the company,) they are rateable in respect of them. There may be a difficulty in affixing the quantum of rate; that, however, is not for us, but for the sessions to settle. They will fix that according to the degree of productive value which they may ascertain to arise from the occupation of this particular part of the soil. It seems clear, on the whole, that in this case the company are not rateable for the bed of the river, for they have merely an easement in it. Probably, certain acts which they have exercised might be *prima facie* evidence of their being owners of the soil; but the moment the statute is looked at, it is quite clear that those acts are referable to the powers they have under the statute, and not to any exclusive right to the possession of the soil. It seems to me, therefore, that they are not liable to be rated for the bed of the river, having only an easement in it, but that they are liable to be rated for the cuts, for they are owners of the soil of them, and derive a benefit from them, either directly in the shape of toll, which they receive from other persons, or indirectly in respect of what they receive from their own customers; and whether they receive it from other persons who pay toll, or receive it from their own customers at the end of the voyage, makes no difference, as the enjoyment of that land is profitable to them in both cases, and for that profit they ought to be rated. As to the remaining question, it will be whether they are owners of the soil on which the locks are placed: if they are, and if they have the land on which the locks are placed in their own use, if they have the right of possession, and receive the profit arising on that, they will be rateable." Lord Tenterden, C. J., "All that we can pronounce is, that we quash the order of sessions; the rate is not brought up before us." Order of sessions quashed.

Exclusive right
test of occupation.

Rex v. Thomas, 9 B. & C. 114; *S. C. nom Rex v. Avon Company*, 4 Man. & R. 23. By an act of parliament certain persons were authorized to make the river Avon navigable from B. to H., and to maintain such navigation; and, for those purposes, to clear, scour, open, enlarge, or straighten the river; to dig and cut the banks, to make new cuts, trenches, or passages for water through lands adjoining; and to build bridges, sluices, locks, &c. and to do all other things necessary for making and maintaining the navigable passage, first giving satisfaction to the owners of lands; and commissioners were appointed to settle what satisfaction every person should have for such proportion of his lands as should be cut, dug, removed, or made use of for carrying on the undertaking, and to settle what proportion of such purchase money or satisfaction every person, having a particular

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estate or interest in any of the premises, should have for his respective interest; and, in consideration of the expenses to be incurred, the undertakers were authorized to take, for their own proper use and behoof, certain tolls. The undertakers made the river navigable. A cut and lock were made in the respondent parish at the expense of the proprietors, who still continue to cleanse the river. No specific toll is payable for passing the lock or cut, but for this purpose they form part of the navigation of the river, and are substituted for the natural river. None of the appellants reside in this parish. The navigation is eleven miles in length; three of which are in the respondent parish. The length of the cut, &c. in that parish is 300 yards. The clear annual income of the whole is 4000*l.* The river was rated at 100*l.* and the cut at 5*l.* This case was argued before *Rex v. Mersey*, and after giving judgment in that case, Lord *Tenterden* said, "The question is precisely the same as in *Rex v. Mersey*, and we are of opinion, that the proprietors of this navigation are not occupiers of land covered with water by part of the river Avon, and are not liable to be rated for the same. We agree with the sessions in deciding that the cut or navigable canal which was actually made by this company upon land purchased by them, and the lock which is erected on such land, are, according to all the authorities, fit subjects to be rated to the poor." (a)

The grant of the "navigation" passes only an easement.

Rex v. The Undertakers of the Aire and Calder Navigation, 9 B. & C. 820; 4 Man. & R. 728. The 9 & 10 Will. III. gave to certain undertakers authority to make navigable the river Aire, and for that purpose to cleanse and scour the same, and dig and cut the banks. By a subsequent act, reciting that the legal estate and interest in the navigation of the said river, and divers messuages, mills, warehouses, buildings, lands, tenements, and hereditaments, were vested in trustees, they were authorized by deed to sell and convey in fee such messuages, mills, lands, or tenements, belonging to the undertakers, or to convey in fee, by way of mortgage, as well the said navigation as also all or any messuages, mills, lands, tenements, and hereditaments, being the property of the undertakers: Held, that the word "navigation" imported an *incorporeal* hereditament, and that it authorized the trustees to mortgage in fee that *incorporeal* hereditament, and the first act having given the undertakers an *incorporeal hereditament only* in the bed of the river, they were not rateable to the poor as occupiers of the river Aire. Nor are the company rateable for a dam erected to make the river navigable. (3 B. & Ad. 139.)

Rex v. Chelmer and Blackwater Navigation, 2 B. & Ad. 14, 18. The soil of the river Blackwater was not by the statute vested in the proprietors, but only the privilege of using it in the nature of an easement.

6. COMMONS.—RIGHTS OF PASTURE.

6. Commons, rights of pasture, &c.

Land, over which there exists a right of common, which affords a *beneficial occupation*, is rateable; but the party to be rated must not only be the beneficial occupier, but he must have such a *possession* as will enable him to maintain an action of *trespass*, which a mere commoner cannot sustain. In most cases, therefore, where the common belongs to a corporate body, the corporation, and not the members individually, must be rated. A *mere right of common* is not rateable.

Members of a corporate body, which holds in fee certain common lands, exercising their right of common on such lands, are rateable. (b)

Rex v. Watson, 5 East, 480. Appeal against a rate. Case:—The mayor, &c. of Huntingdon were the owners in fee of lands, which were used as a common of pasture, and stocked by such resident burgesses as thought proper to stock, under certain restrictions. That some of the resident burgesses stocked fully, that others did not, and some not at all. That in the latter

(a) In this case Lord *Tenterden*, in giving the judgment of the court, observed, "that if there should happen to be in any parish no new cut made, or any profitable building erected, but land should be bought for locks and wears, which are in themselves unprofitable, it might be contended that the company would not be rateable at all for the land so taken. (b) On this case being cited in *Rex*

case, an annual payment was made by those who did stock to those who did not; and that persons omitted were resident burgesses and did stock. In the course of the argument it was observed by *Lawrence, J.*, that the word *occupation*, properly speaking, implies *possession*. *Lord Ellenborough, C. J.* "This is not an incorporeal hereditament. The corporation are the owners in fee of the land, and they dole it out annually, according to the custom, to certain of the burgesses, such of them as take it paying a certain sum to those who do not turn on any stock. Then when the number of those who stock is ascertained, what is there to distinguish them from other tenants in common? Each of them might maintain *trespass* for an injury done to his occupation in common. It has been decided that a common in gross is a tenement, and it should seem from thence that it is rateable; (a) but without considering that this case steers clear of all difficulty, for I do not consider this as an incorporeal hereditament, but as a corporeal tenement, of which the several burgesses who stock are tenants in common. And we cannot say that an enjoyment of land, which is of such value as that those who do not actually enjoy it, but who might if they so pleased, are entitled to a compensation from those who do, is not something which is rateable; and being rateable, it must be rated in the hands of those who have the beneficial possession." *Le Blanc, J.* added, "It is improper therefore to call it a right of common; because it is holden in fee by the corporation for the benefit of the resident burgesses. The corporation themselves, as a corporation, have no benefit from the land, but the resident burgesses to whom it is meted out annually by the leet jury. This view of the case avoids the difficulty stated in the argument of rating persons having a right of common running into several parishes: for this is a case of persons having an equitable right to the land, the fee of which is vested in the corporation for their benefit." The rate sent back to be amended by the insertion of the burgesses occupying the land.

Quere, Whether a common in gross be rateable.

Rex v. The Trustees of Tewkesbury, 13 East, 155. Appeal against rate. Before the 48 Geo. III. for inclosing lands in Tewkesbury, and for vesting the after or lattermath of a meadow called Severn Ham in trustees, the burgesses or freemen of the borough of Tewkesbury resident within the borough for the time being, and the occupiers for the time being of certain houses situate within the borough, were entitled to a right of common for a limited number of their own cattle only in the Severn Ham, for a certain period in every year, which right of common was, according to the said act, afterwards suspended by order of the commissioners, and the after or lattermath of the Severn Ham was by the act declared to be vested in certain trustees, for the burgesses or freemen and principal householders of the borough of Tewkesbury, for ever discharged from all right, &c. which any person could have in the same. The trustees might *let and set annually the after or lattermath of Severn Ham, or any part thereof*, to any persons at the most improved yearly rent; and also might *let the lattermath of Severn Ham in pastures* for horses, cattle, and sheep, to different persons, in such manner as they should appoint; or they might lease for term of years; and the rents arising from the lattermath of the said meadow should every year be paid and divided between such burgesses or freemen of Tewkesbury, and such occupiers of houses within the said borough as would have been entitled to rights of common upon the meadow, if that act had not passed, according to their respective rights and interests. On the 12th of August, 1809, the trustees not being able to let the said aftermath together for a sum equal to its value, *let it out in pastures at a certain sum per head for horses, cattle, and sheep, to various persons*, for 295*l.*, but subject to expenses of between 30 and 40*l.* The several persons who took the aftermath in pastures, enjoyed the same by turning

The trustees of aftermath are rateable where the aftermath was vested in them, and by them let out in pastures at so much per head.

v. Tewkesbury, infra, 145, Lord Ellenborough said, "There each was in possession of a distinct interest in the land, as in the case of a cattle gate, for which he might have maintained an ejectment. And as to cattle gates, see *Rex v. Whix-*

ley, post.

(a) This is not a legal inference, for though a common in gross is a *tenement*, it is an *incorporeal* tenement. It is not comprehended by the word "land," or susceptible of occupation.

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in their cattle from the 12th of August, 1809, to the 13th of February, 1810, and the trustees did not occupy it, unless such letting, &c. amount in law to an occupation by them. No alteration has been made since the passing of the act in the proportion of the poor rates of the parish assessed on the occupiers of the houses there, who were previously entitled to such right of common on the Severn Ham, nor has any deduction been made from the assessments in consequence of the alterations introduced by the act. The question was, whether the trustees were liable to be rated in respect of the after or lattermath? When *Rex v. Watson* was cited, Lord *Ellenborough*, C. J., said, "There the corporation could not take in the cattle of a stranger, but here the trustees may contract with any persons to take in their cattle by the year, or by the month, or week; and here not being able to let it altogether, they took in the cattle of different persons at so much a head. Who then can be said to be the occupiers, if they are not in this case?" And afterwards, in giving judgment, he said, "The letting is at so much a head, without any definitive time, or for any definitive portion of the aftermath, nor were the trustees bound to limit the number of cattle, though they might have done so." *Grose*, J., agreed. *Le Blanc*, J. "The persons whose cattle were taken in had no definitive portion of the aftermath let to them." *Bayley*, J. "In the *Huntingdon* case the portions of those who had a right to stock were ascertained, but here there was nothing to limit the trustees from taking in others." Order of sessions confirmed for rating the trustees.

Where a corporation was seised of certain pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing thereon; and, at a court held annually, made such regulations concerning their pastures, and the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money, after deducting the expenses of management of the land, was distributed among the burgesses who did not turn on: Held, that the corporation were liable to be rated to the poor, as the beneficial occupiers of these pastures.

Rex v. The Mayor, &c. of Sudbury, 1 B. & C. 389; 2 D. & R. 651, S. C. Appeal against rate. Case:—*Richard de Clare*, about the year 1250, granted certain pasture land, called Portman's Croft, in the hamlet of Ballingdon, to "his burgesses and whole commonalty of Sudbury;" and Charles the Second, by his charter, under which the corporation now exists, confirmed the said grant to the mayor, aldermen, and burgesses. This land is inclosed, and the corporation, consisting of a mayor, six aldermen, and twenty-four capital burgesses, appoint the ranger of the commons, to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing. They, at a Court of Orders and Decrees, annually make such regulations concerning their commons as they think proper, and give a public notice of them by the common crier; and for the year when the rate in question was imposed, the order declared that every burgess who had a right to turn on his cattle to feed on the commons, should put two head of cattle, and no more, on Portman's Croft. It then appointed the day when the cattle should be turned on, and to fix the price of each head of cattle, which price is always paid by the freemen exercising this right (who amount to more than 100,) to the treasurer of the corporation. The mayor, aldermen, and capital burgesses (being resident) enjoy the same right upon the same terms, and some of them exercised it during the year for which the rate was made. The cattle are branded by the ranger when turned on. The whole of the money thus paid to the treasurer, after deducting the expenses incident to the management of the land, is distributed among the poorer burgesses, who have, but do not, on account of their poverty, exercise a right of depasturing cattle. The mayor, aldermen, and capital burgesses were rated, in their corporate capacity, as the occupiers of Portman's Croft; and the questions for the opinion of this court were, whether there was any rateable occupation of Portman's Croft; and if there were, whether the corporation, or individuals who depastured their cattle upon it, were liable to be rated? *Bayley*, J. "I am of opinion that the corporation were the beneficial occupiers of the land in question. We have been pressed strongly with *Rex v. Watson*, but that case differs from the present in two important particulars. There the individuals who turned on had the exclusive enjoyment of the land, for the purpose of turning on their cattle. No payment was made by them to the corporation, but to those resident burgesses who had the right to stock and did not exercise it. Here it is clear, from the facts stated in the case, that the corporation retained the exclusive right to the possession of the land. They appointed a ranger, he was their servant, and paid out of their funds; his duty was to keep the keys of the gates, clean the ditches, repair the fences, and impound cattle: all these acts are usually done by the occupiers of land.

The commoners could not insist upon having the keys from him. If the occupation, however, was in them, they would be entitled to have the controul of the gates, and they would be bound to do the several acts in respect of their occupation, which the corporation did by their servant. The corporation received the agistment money paid in respect of the cattle turned on the land; they therefore occupied the land as agisters of cattle. The present case appears to me to fall within the principle of the decision in *Rex v. Tewkesbury*. The only difference is, that there the common was fed by the cattle of strangers, and here, by the cattle of the members of the corporation. If, however, the exclusive occupation of the land is in the corporation, the principle upon which that case was decided is applicable to the present. The trustees were there considered as taking in cattle to agist, and particular stress was laid by the court upon the circumstance, that there was no letting of any definite portion of the aftermath. Now, in this case, no definite portion of the land is let to any one individual. The corporation do nothing more than take in cattle to agist; they do not even know, in the first instance, how many cattle will come in. For these reasons it seems to me that this case falls within the principle of *Rex v. Tewkesbury*, and is distinguishable from *Rex v. Watson*. If it were necessary to overrule either case, I should adhere to the decision pronounced in the former case, which seems to me to furnish a more reasonable rule of construction than *Rex v. Watson*." *Holroyd, J.* "This case differs from *Rex v. Watson* in several particulars. In that case it did not appear that the corporation did any acts upon the land. The temporary ownership seems to have been given up to the three persons mentioned in the case. Here the right of soil is in the corporation; they have the management of the land by the ranger, their servant, who keeps the keys of the gates, and cleans the ditches; at the court mentioned in the case, they annually make regulations with respect to the mode of enjoyment of the commons by the burgesses. The money paid in respect of the cattle turned on, is received by the corporation, though it be afterwards distributed among the poorer burgesses. Many of these acts done by them could only be done in respect of their being in possession of the land. That is perfectly consistent with the exercise of subordinate rights by the burgesses. In respect of any injury done to the land itself, trespass would lie by the corporation, but in respect of any injury done to the right of common, the burgesses could only maintain an action on the case. In *Rex v. Watson*, the part of the common situated in the parish of St. Mary seems to have been in the exclusive occupation of the three persons mentioned in the case. The objection to the rate was, that those persons were not rated for certain lands in the parish of St. Mary, over which they had commonable rights, which said lands, in the notice of appeal, was stated to be in the respective occupation of the said three persons. The case stated that the mayor, aldermen, &c. of Huntingdon, were the owners and proprietors of large tracts of land within the borough, used as a common of pasture, and stocked by the burgesses, part of which lands, viz. those mentioned in the notice of appeal, was in the parish of St. Mary. Now, that part in the parish of St. Mary was stated in the notice of appeal to be in the occupation of three persons named in the case. Those persons appear, therefore, to have had the exclusive occupation of those lands at the time when the rate was made. During that time the corporation could not do any act upon the land; they could not maintain trespass for any injury done to the land. Here the possession is in the corporation, although there be a subordinate right in others. There was no letting of any definite part of the common to the burgesses, there was no rent reserved, but merely something paid for the agisting of the cattle. For these reasons I am of opinion that this case differs from that of *Rex v. Watson*, and that the order of sessions must be affirmed." *Best, J.* "I think *Rex v. Tewkesbury* furnishes a more just principle of construction than *Rex v. Watson*, and I should be disposed to overrule the latter case, if it were necessary to do so in the present instance. If *A.* occupies for the benefit of *B.*, *C.*, and *D.*, *A.* is to be rated. Here the corporation are the owners as well as the actual occupiers of the common, although they occupy for the benefit of

Commons.

individual corporators, viz. first, for the benefit of the burgesses who put in their cattle; and secondly, for the benefit of the poorer sort, among whom the money received is afterwards to be distributed. The burgesses are nothing like tenants in common: they have no interest whatever in the soil; it is clear that the corporation retained possession by their officer; he could not otherwise impound cattle damage feasant, that being an injury done to the occupier of the land. The corporation are even to decide how many cattle each burgess is to turn on. This shows, clearly, the right of occupation to be in the corporation, although the right of turning on be in different members. It seems to me that this is not distinguishable from the case of persons taking in cattle to agist. The corporation must be considered as the owners, for it is impossible to rate any other person; for before the orders of the court are issued, the individuals who are likely to have any interest are unknown." Order of sessions affirmed.

A right of common for a portion of the year, during which period the commoners exclude the owner of the freehold and his tenant from the fields over which the right is exercised, is not rateable.

Rex v. Churchill and Booth, 4 B. & C. 750; 6 D. & R. 635. In the parish of St. Mary, Nottingham, are about 280 acres of meadow, to the pasturage and herbage of which the burgesses resident in the three parishes of Nottingham, even if they are inmates not renting or holding any tenement or hereditament whatever, are exclusively entitled, and to turn in three head of large cattle each at certain periods of the year. There are also 650 acres in the sand and clay fields, fenced off into different sized closes, belonging to different individuals. The burgesses resident in the three parishes, and also the occupiers of ancient messuages in the three parishes, and who, as such occupiers, are severally rated to the poor in their respective parishes for their messuages, but not for such common right, claim, and such of them as choose exercise, the right to turn in three head of large cattle from Old Lammas day to Old Martinmas day in every year, during which period neither the owner of the freehold nor the tenants have, as such, any right to turn in cattle therein; and during that period the pasturage and herbage of the said fields are of the value of 10s. per acre. The several persons named in the notice of appeal had each of them cattle, some three, some two, and some one, in either the fields or meadows during some part of the time the same were commonable, and at the time of making the rate; but none of them were rated for so depasturing their cattle, nor has it ever been usual in the said parish of St. Mary to rate the persons turning into the fields and meadows during the time of their so being open, and the court of sessions refused to quash or amend the rate on account of such burgesses and occupiers of ancient messuages being omitted to be rated, from the impossibility of ascertaining and rating the whole of such persons so turning into the said fields and meadows for their actual occupation and enjoyment, there being upwards of 2000 burgesses entitled so to turn in, besides the occupiers of many hundred messuages, many of whom exercise such right in different modes and at different times, as by turning in one or more head of cattle for a night or a day, and in other ways, and there being no coin small enough to assess some of them if they were liable to be rated only for their actual occupation and enjoyment. *Bayley, J.* "In order to prove a person liable to be rated, it is necessary to show that he is an inhabitant, or an occupier of lands, houses, &c. The question here is, whether the persons whose names are alleged to have been improperly omitted out of the rate, were individually occupiers of land. The word common is well known to the law, and Lord Coke says, there are four kinds of common of pasture: common appendant, which is appendant to arable land; common appurtenant, for which one must prescribe (in a *que* estate); common *per cause de vicinage*, which is but an excuse for trespass; and common in gross, which is so called, for that it appertaineth to no land, and must be by writing or prescription. Land lies in livery, but a right of common in grant. Does that for which it is attempted to rate the burgesses of Nottingham lie in grant or in livery? Each has a right to turn three cattle upon certain fields during a certain portion of the year. It is claimed by them as burgesses, and as occupiers of ancient houses. Could they be enfeoffed of such a privilege? If not, it is plain they have no right to the soil, but merely an incorporeal hereditament, a right of common by prescription, which is not rateable. The order of sessions was therefore right." *Hol-*

royd, J. "It appears to me that the right is vested in the corporation for the benefit of its members. Supposing that there was a possession in law of those fields, so that trespass might have been maintained either by the corporation or the burgesses, I think it must have been by the corporation. But this appears to me a mere incorporeal right, and not within any of the words in the statute 43 Eliz. c. 2. Land to which a right of common is attached may on that account be rated at a higher value, but the right of common is not rateable *per se*." *Littledale, J.* "The burgesses had a mere right of common, and according to the decided cases that is not the subject of rating. It is said that the exclusive pasture gave them the exclusive interest. I think it had not that effect, and that they could not maintain trespass as persons having the *primam vesturam*. The right enjoyed by these burgesses could only be claimed by prescription in the name of the corporation. According to *Com. Dig. Prescription* (H.) there may be a prescription for sole and several pasture, so as to exclude the owner of the soil, as appears also by *Hoskins v. Robins*, 2 *Saund.* 324, and under such circumstances the persons enjoying the right may grant it to others. But in this case no such grant to others could be made by the burgesses; the exclusive right was in the corporation, and they had it but for a limited time, and could only take it by grant or prescription. The burgesses could not take it by either of those modes, which shows that they had a mere privilege of turning on cattle, in respect of which they were not rateable. The order of sessions must therefore be confirmed."

Rex v. Chelsea Waterworks, 5 *Bar. & Ad.* 156; 2 *Nev. & M.* 765. The company were rated for the soil occupied by their pipes, and the ranger of the park for the herbage. See *ante*, 139.

Ranger of a park rateable for herbage, and the water company for their pipes under it.

Wayleave, when not rateable.

Wayleaves not.

Rex v. Jolliffe, 2 *T. R.* 90. The lessee of a right of way (*i. e.* a wayleave) over the land of another, paying for it so much *per ton* for the goods carried over it, is not rateable as an occupier, such wayleave being a bare right of passage, which is an easement and not a grant of the profits of the land, and an easement is not rateable; the land having been before rated in the hands of the occupier of that land. Nor for the right of navigation, (*R. v. Thomas, post.*)

Wayleave (being a bare easement) not rateable.

Rex v. Bell, 7 *T. R.* 598. The dean and chapter of *Durham* granted certain leases of lands for twenty-one years, reserving to themselves the right of granting waggon-ways over the demised premises, paying damages for the spoil of ground. The chapter then leased to the appellants, &c., certain waggon-ways over these premises, making satisfaction to the original lessee for spoil of ground; they constructed these ways as most convenient to themselves, and prevented all persons, excepting such as were authorized by themselves, from using or going upon these ways; built bridges, put timber all along the way, built two houses by the sides, erected gates, which they locked and opened only when their waggons were travelling. The ground through which the way was made had been let to tenants, who received an annual compensation from the appellants, and these tenants are rated in amount as they were before the way was made. Lord *Kenyon*, C. J. "I entirely agree with the opinion given in the case, (*a*) but this case is very distinguishable from that. The question here is not respecting the quantum of the rate, but merely whether the defendants are or are not possessed of property that is rateable to the poor, and on that point there can be no doubt. One ground of argument is, that because the dean and chapter could only grant a wayleave, therefore nothing more than a wayleave passed to the defendants; but we are not to inquire into the titles of the occupiers. If a disseisor obtain possession of land, he is rateable as the occupier of it, without going through the different parts of the case which show an occupation of the ground by the defendants; it is sufficient to say generally that they clearly appear to be the occupiers. Therefore I am of opinion that the order of sessions must be confirmed." *Ashhurst, J.* of the same opinion. *Grose, J.* "It is impossible

Waggon-way, with exclusive occupation of the ground, held rateable.

(a) *Rex v. Jolliffe*, 2 *Term Rep.* 90, and *supra*.

Wayleave not.

A barge-way rateable, and the tolls taken are a criterion of value.

to read this case without seeing that the defendants have the exclusive occupation of this ground. It is stated in the case that the defendants have enclosed the ground of the extent of five or six acres, thereby excluding 'the lessees of the dean and chapter and their undertenants, as well as all other persons,' that they have placed gates across the way, erected a bridge, and built two houses on it, which are occupied by the servants of the defendants. They were therefore properly rated as the occupiers of this ground." *Lawrence, J.* of the same opinion. Order of sessions confirmed.

Rex v. The Mayor of London, 4 T. R. 21. The defendants were rated for the barge-way and toll-gate in *Hampton Wick, Middlesex*. The appellants, by an act of parliament, purchased an ancient barge-way or towing-path within *H. W.* upon the *Thames* bank, and certain ancient tolls payable in respect of horses drawing barges along the same. The appellants leased the herbage of the way and path for a sum which was appropriated to the navigation; the lessee occupied and paid rates for the herbage. The old tolls were discontinued, and new tolls were taken for all barges navigating between *London Bridge* and the *City Stone*, according to the quantity of tonnage; $1\frac{1}{2}d.$ per ton was payable and paid to the appellants for every barge towed along a certain part of the barge-way, and *H. W.* is within that limit, and the tolls were collected elsewhere, and not at *H. W.* *Lord Kenyon, C. J.* "The difficulty has arisen from not considering *what* is rated. It is not a rate on the tolls, but the close of land called the barge-way, and the toll-gate. Now the questions are, first, 'whether the property be or be not rateable?' second, 'who should be rated for it?' First, the subject-matter of the rate is real property; it is land, tenement, or hereditament, and it is liable to be rated unless it be so circumstanced that there is no occupier on whom the rate can be imposed. But here the city of *London* are occupiers; for the lessee's interest is confined to the herbage and pasture. And there is no doubt that they are in possession of the actual occupation of this towing-path."

Ferries.

The lessee and occupier of an ancient and exclusive ferry, not being an *inhabitant* residing within the township in which one of the termini of the ferry is situated, is not liable to be rated there for any share of the tolls of such ferry; for supposing a ferry to be real property, it is not such real property as is mentioned in the stat. 43 Eliz. c. 2, the occupancy of which subjects the party to the relief of the poor of the place. And all the cases where parties have been held rateable in respect of the occupancy or receipt of tolls (apart from the question of inhabitancy) have been where they at the same time occupied real visible property connected with such tolls in the place where they were rated.

7. TOLLS.—Ferry.

Rex v. Nicholson, 12 East, 330. Case:—The appellant is an inhabitant of *Sunderland*, which town lies close to the sea, at the mouth of the river *Wear*, which divides *Sunderland* from *Monkwearmouth-shore*. There is an ancient ferry which crosses the river from *Sunderland* to *Monkwearmouth-shore*. This ferry, in 1795, was purchased by the commissioners of *Wearmouth bridge*; and the ferry and the tolls thereof are leased to the appellant at a yearly rent. Two boats ply all the day, and the fare paid for a person passing in the ferry is a halfpenny each way; and of late years for convenience it has been accustomed to collect the money of the passengers as they enter the boat on either side of the river, instead of when they go out, as done formerly. There is a small boat goes during the night; and the inhabitants of *Monkwearmouth-shore*, who are accustomed as aftermentioned, pay the same fare of a halfpenny as persons not accustomed do, if they go over in this night-boat. The boats, when not used, have always been locked up on the *Sunderland* side of the water, close to the place where the passengers get in on that side. The ferry has always, until the year 1802, when it was let to *T. Wandless*, who lived in *Monkwearmouth-shore*, been let to persons living in *Sunderland*, and been rated to the poor of *Sunderland* for the whole of the ferry dues: and it has at different times been also rated to the poor of *Monkwearmouth-shore*; but nothing was ever paid to that township until *Wandless* took the ferry, when the parish of *Sunderland* having raised his rate, in consequence of his having given an additional rent, he objected to pay, and appealed to the sessions in July, 1805, but the case was abandoned by the respondents, and *Wandless's* rate was amended, and reduced to half of the tolls of the ferry; and the ferry has since been continued to be rated to *Monkwearmouth-shore* for *one-half of the tolls or ferry dues*. The place where the ferry lands in *Monkwearmouth-shore* is of little or no value of itself, in case it was not used in the ferry-landing. *Lord Ellenborough, C. J.*, (first stating that the case of *Williams v. Jones* was governed by this,) said, "The rate is here imposed on the tolls merely of the ferry: and the question is, 'whether the

proprietor of the ferry, who is not an inhabitant of the township in which he is rated, be liable to be rated for such tolls received by him there?" And this being a question upon the construction of the stat. 43 Eliz. c. 2, it is material to look to the words of it. By that statute the parish officers, by consent of two justices of peace, are directed to raise a competent sum for the relief of the poor by taxation of 'every *inhabitant*, parson, vicar, and other, and of every *occupier* of lands, houses, tithes impropriate, appropriations of tithes, coal-mines, or saleable underwoods in the said parish.' Now *tolls* (a) do not come within any one specification of occupancy described by the statute: they are not *lands*, nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an *inhabitant* of the parish out of which they arise: but there is no case in which the word *inhabitant* in that statute has been held to mean any other than a resident within the parish. In the cases which have occurred of rating in respect of personal property, such as *Rex v. Liverpool*, and *Rex v. Collison*, cited in *Rex v. Jones*, (8 East, 451, 455 (n), 457 (n),) residence was considered necessary to constitute inhabitancy. But we are reminded of cases where *tolls* arising from navigable canals, to which the tolls of a ferry are assimilated, have been held rateable, without any reference to the question of inhabitancy: and the *Wickham* case is much relied on, where a corporation was held rateable for market-tolls: but they were the lords of the soil where the market was held, in respect of which they were rated for the tolls. In *Rex v. Cardington*, the rate was specifically upon the sluices, on that which was local and visible property, and producing profit within the parish; and all the cases where tolls have been held to be rateable, when they are examined, will be found to have proceeded on that ground. But there is no case where tolls detached altogether from local real property have been held to be rateable *per se*. When, therefore, we are called upon to decide such a question for the first time, I am always disposed to go to the fountain-head, which is the act of 43 Eliz.; and looking at the words of that act, I do not find any of them which extend to rate any person not being an inhabitant of the place, nor the occupier of any of the specific kinds of property mentioned in the act. And not finding any description in the statute which applies to the case of this appellant, I cannot hold him to be rateable for these tolls." Grose, J. of the same opinion. *Le Blanc*, J. "The appellant is rated specifically as the lessee of the ferry for *half of the tolls or ferry-dues* in the township of Monkwearmouth-shore; and it is found he is an inhabitant of and lives in Sunderland: and it is not stated that he is the occupier of any property in Monkwearmouth-shore: and that brings it to the simple question, 'whether a person residing out of the township be rateable there for the tolls of a ferry, which tolls arise and become due to him for carrying passengers and cattle from the one shore to the other, one of which lies in the township?' The case of the owner of the packet-boats, *Rex v. Jones*, comes very near to that of a person who has an exclusive right of carrying passengers and goods in a ferry-boat; but the packet owner was only held to be rateable for his profits in the parish where he resided, and where the boats were kept, and produced the profit to him; and he was considered not to be rateable in any other place to which the boats sailed where he was not resident." Bayley, J. "This person is neither an inhabitant of the township within the meaning of the statute, nor an occupier of any of the species of property mentioned in it. In a statute which mentions *inhabitant* as well as *occupier*, inhabitant must mean *resident*, otherwise it would for this purpose mean the same as occupier. In all the cases of tolls, it will be found that the persons rated were the occupiers of *lands* within the place, in respect of which the tolls in the whole or in part were payable. In *Rex v. Cardington*, the party was rated for the sluice, of which he was the occupier, which sluice was real property; and canals are real property: they are land applied to a particular purpose, and the tolls are the profits arising from that use of the land, and are given to the proprietors as a compensation for the use of it in that manner. Here the appellant was not an inhabitant of Monkwearmouth-

Tolls, Ferry.

Tolls not within the words of 43 Eliz.

Inhabitant.

(a) There had been an opinion expressed by Holt, C. J., (3 Keb. 540,) that tolls were rateable.

Tolls, Ferry.

The owner of a ferry, residing in a different parish, but taking the profits of the ferry on the spot by his servants and agents, is not rateable for such tolls in the parish where they were so collected and where one of the *termini* of the ferry was situated, and on which shore the ferry-boats were secured by means of a post in the ground; the soil itself at the landing places being the king's common highway; and the owner of the ferry having no property in or exclusive possession of it.

Lessee of tolls not rateable as such *per se*.

shore, and he was not an occupier there of any real property, for which he was rateable." Order of sessions quashed.

Williams v. Jones, 12 East, 346. Williams was the proprietor of Porthacethwy ferry, and of the tolls thereof. It was an ancient ferry across an arm of the sea, the straits of Menai, and the king's highway from London to Holyhead. There are five landing-places in the parish of Llandisilio, used by the ferry-boats on landing; which landing-places have, for four years, been repaired by Williams, and there is a post fixed in the ground at one of them, to which the ferry-boats are usually moored. The arm of the sea is navigable for all the king's subjects: and they have always of right landed at the several landing-places at their pleasure: and the proprietor of the ferry never had the exclusive use of any of the said landing-places; but has the exclusive right of conveying by his boats, persons, cattle, and carriages, for hire, from a part of the king's highway lying in the parish of Bangor, to another part of the king's highway, lying in Llandysilio. The ferry-boats have been worked by the proprietor's servants; and the tolls paid to his servants, sometimes upon the arm of the sea, a little before the arrival at the landing-places, and at other times upon the landing-places in Llandysilio, after the person paying the same have landed; and the proprietor's servants have paid over the tolls to his agent, residing in Llandysilio. This agent has never been rated; and has paid over such tolls to another agent at Beaumaris, out of Llandysilio. Williams never inhabited Llandysilio. Some observation was made upon the post driven into the soil; but the court considered that this did not essentially vary the question; for the owner of the ferry was not found to have any property in the soil of the highway; and supposing that he had a right to make such a special use of the highway, for the purpose of securing his ferry-boats, that did not make him the occupier of the highway; nor give him any exclusive possession of it; nor could he maintain trespass for any injury done to the soil at the landing-places, which were common to all the king's subjects to land and pass upon. After judgment had been delivered in *Rex v. Nicholson*, Lord Ellenborough, C. J., declared the opinion of the court, that the decision of this case necessarily followed that of the other, the question in both being substantially the same.

Rex v. Eyre, 12 East, 416; 1 *Nol. P. L.* 127. The defendant was assessed as "lessee of the tolls of the Key Bridge" at Tewkesbury at the rent *bonâ fide* paid. Case:—By 48 Geo. III. c. 62, trustees are appointed for rebuilding the Key Bridge across the Avon in Tewkesbury, and for making convenient roads thereto. It enacts, that out of the first monies arising by the tolls, or out of the first money which should be borrowed upon the credit thereof, the trustees shall repay sums advanced thereon with interest; and all the money which should come to their hands for the purposes of the act should be applied in erecting the toll-houses, and to other purposes relating entirely to the bridge and its avenues, and for no other purpose. "That as soon as the purposes of the act should be carried into execution, and the principal and interest borrowed be repaid, all the tolls imposed should cease, and the new bridge and the approaches leading thereto should thereafter be repaired by such persons as were by law liable to repair the same." The tolls are leased to the appellant. It was not proved that the appellant made any profit on the tolls; on the contrary, *it is believed*, that the lessee has a most unprofitable taking, and that he will not even clear his present rent. The court observed that the case was imperfect, in not stating either that the lessee was the *occupier* of any toll-house or dwelling-house within the parish, which was the proper subject-matter of a rate, or that he was an *inhabitant* of the parish, and in not finding whether the lessee did receive any profit from the tolls beyond the rent which was applicable to public purposes, but merely stating that *it was believed* that he did not. Lord Ellenborough, C. J., "As the Court had so recently decided that tolls *per se* were not rateable, and as the appellant was rated merely as lessee of the tolls, and for nothing else which might have given them a corporeal quality and locality within the parish, such as for a sluice or the like; and as it did not appear that he was an *inhabitant* of the parish, or made any profit of the tolls, there was nothing stated in the case to raise any question. And though it should turn out to be the fact (which was suggested

from the bar) that there was a toll-house (a) attached to the bridge where the appellant dwelt, yet as the sending the case back to the sessions to be re-stated would probably only lead to their inserting as a fact what at present they only stated as matter of belief, that the lessee derived no profit to himself from the tolls, it was better for all parties to quash this rate, and if at any future time the parish thought they could make out a better case against the lessee, they might rate him again."

Tolls, Ferry.

Fishery.

Fishery.

Rex v. Ellis, 1 M. & Sel. 652. The defendant was rated in *Westbury-upon-Severn*, as lessee of all those fishings of the halves and halven-doles, with the appurtenances to the halves due and accustomed within the river *Severn*, between certain limits within a manor bordering on the said river under an annual rent. Lord *Ellenborough*, C. J. "The rate has been confirmed by the sessions; we must therefore see that they have done wrong before that we determine that their adjudication ought to be quashed. I will not assume that a fishery, as an incorporeal hereditament, is the subject of a rate. The question then is, whether there be any land connected with this fishery so as to be the subject of rate. What is the thing granted? In 1625, the king grants 'all that our fishery of the halves and halven-doles with the fishings called *Unlawater*, with the appurtenances to the halves due and accustomed.' I could have wished that the sessions had explained to us, if any lights were afforded by the evidence, the meaning of the term "halves and halven-doles," which is not very familiar to us. It has been treated in argument as if it related to half of the river, and the grant being 'with the appurtenances to the halves due and accustomed,' is in favour of the construction of the half *ad filum aquæ*, which, according to Lord *Hale*, belongs, by the constant custom of the country, to the lords of the manors on either side of the river; in support of which custom he cites the Lord *Barklay's* case. But whatever its meaning may be, I think from the grant of 'the fishings with the appurtenances to the halves and dues accustomed,' it appears distinctly that these halves and halven-doles are of the nature of land, or some local limit within which the fishery connected with the soil is to be exercised. I cannot consider it otherwise than as a grant of something territorial. I do not found my opinion on this being a sole right of fishery, or coming within any particular description of fishery under which the soil must pass: but I think that under the circumstances we ought not to quash the order of sessions, unless we are satisfied that the sessions could not, upon any reasonable ground, conclude that by this grant of halves and halven-doles, &c., some territorial right was conveyed. A grant of soil was also inferred from the grant of royal fisheries, as the right to them is in general appurtenant to the soil, and also of the reservation of a rent, and the manner in which the right had been enjoyed." Bayley, J. added, "A mere incorporeal fishery is not within the statute."

The lessee of halves with fishings in the river *Severn*, was held rateable, as possessing an interest in the soil.

Market Tolls.

Market Tolls.

Rex v. Bell, 3 M. & Sel. 221. The Earl of Egremont is lord of the manor of *Cockermouth*, and owner of the soil of the streets of the town of *Cockermouth*. He, or his lessees, have from time immemorial collected and received certain tolls of corn sold in the market; the toll has, however, been hitherto collected at the commencement of the market out of every sack brought and exposed for sale. The earl, or his lessees, also receive payments or stallage there from persons using stalls, and exposing upon them such things for sale as are usually sold on stalls; and the earl, or his lessees, take the sweepings of the streets. The market is a market by prescription, and is holden in the public street and highway in the town of *Cockermouth*, where the sacks of corn are set down for sale, and the tolls are there taken. The tolls of corn are a handful out of each sack; Bell is the present lessee of them, and pays a yearly rent of 50*l.* to the earl, and as such lessee takes the tolls of corn in the market; but he is not an inhabitant of the township of *Cocker-*

The lessee of market tolls in gross not incident to the soil, is not rateable to the poor in respect of his occupancy thereof.

(a) Upon this point see *Rex v. Snowden*, 4 Bar. & Adol. 713; 1 Nev. & Man. 459, S. C. post, 154.

Market Tolls.

mouth, nor possessed of any property except these tolls. He is rated for "corn tolls." He is not the lessee of the stallage or sweepings, other persons are, who are rated for them. Lord *Ellenborough*, "I cannot say, upon this statement, that the appellant is an occupier of land. Would he not be equally entitled to the toll, although the sacks were not set down in the market, but were upheld on the shoulders of those who exposed the corn to sale? There is nothing to give this toll a corporeal quality. *Bayley, J.* "Bell is assessed in the rate for corn tolls, which, it is plain from the statement of the case, were mere market tolls, and not incident to the soil. In *Heddey v. Welhouse*. (*Moor*, 474, cited in 2 *Str.* 1239,) the distinction is well taken; for it is said, if the king grant a fair or market with toll certain to one and his heirs, to be holden in land, which is borough English, and the grantee die, the heir at common law shall have the market and the toll; but the younger son shall have the stallage and pickage with the soil, by the custom." *Holroyd, J.* "These tolls would be equally payable if the soil had belonged to another."

The lessee of toll traverse and of a toll house (which he occupies), is not rateable for the tolls, but for the toll house only.

Rex v. Snowdon, 4 *Bar. & Adol.* 713; 1 *Nev. & Man.* 459, S. C. The mayor and burgesses of Newcastle claim a toll for goods brought into the town in consideration of repairing the streets. The appellant, who was not an inhabitant of St. Nicholas, was the lessee of the toll house in that parish. The toll house is occupied by the appellant's collector, who receives the tolls in the street and not in the house. The appellant was rated for the "toll house and tolls collected there." It was contended that this was a toll traverse. *Parke, J.* "Assuming it to be a toll traverse, the lessee is not the occupier of any part of the soil in respect of which the toll arises." As to his liability, as occupier of the toll house, *Parke, J.* said, "that occupation makes him liable to be rated in respect of the profits of the toll house: but if that were pulled down, or he did not occupy it, he would be entitled to receive the tolls. Assuming this to be a toll traverse, it would be paid for passing over the soil of another." And the court decided that he was rateable for the house but not for the tolls.

Manor and Quit Rents.Manor and Quit Rents.

Rex v. Vandewall, 2 *Burr.* 991. The lord of the manor was charged for the manor itself, (exclusive of the demesne lands,) consisting of quit rents, fines for renewal of copyhold, and other casual fruits and profits. The lord was not an inhabitant of the parish. Lord *Mansfield*, "The rents and profits of the manor are not rateable to the poor, which," he said, "was so clear that there was no need to enter into any reasoning about it." Lord *Kenyon*, in *Rex v. Alberbury*, observed "the case of the quit rents went upon the objection of double rating the same property, in the hands of the landlord as well as the tenant." (a)

8. TITHES.Tithes.

By 43 Eliz. c. 2, s. 1, *The parson, vicar, and occupiers of "tithes impropriate, and appropriations of tithes,"* is to be rated by the express terms of the act. If it were not for the express enactment it would be otherwise, because in general no incorporeal hereditament or mere easement, however valuable, is rateable to the poor. *Chanter v. Glubb*, 4 *Man. & Ryl.* 334; 9 *Bar. & Cres.* 479, S. C.; 4 *D. & R.* 253; 2 *Bar. & Cres.* 713; 2 *Man. & Ryl.* 378; 8 *Bar. & Cres.* 327. And see *Bird v. Higginson*, 4 *Nev. & Man.* 505; 6 *Car. & P.* 608; 1 *Harr. & Wol.* 61; which establish that no legal interest in an incorporeal hereditament passes by demise or contract not under seal. A rent charge is not rateable.

The occupier of the tithes is to be rated. And when they have been granted or demised to another by deed under seal or by statute, the grantee is such occupier. If tithes have been extinguished by statute, then the vicar is rateable in his character as vicar, the rent in lieu of tithes being part of his local visible personal property in the parish. And this differs from rent paid to an inhabitant landlord, because it is not previously assessed in the hand of the tenant, as the rack rent generally is.

Rex v. Turner, 1 *Str.* 77; 1 *Bott*, 126. The vicar appealed against a rate

(a) See as to the same point *Carth.* 14, and *Comb.* 264.

for tithes, for which the sessions discharged him. By the court, "The vicar is chargeable by 43 Eliz., and the sessions hath only power to moderate, not discharge." Order of sessions quashed.

A parson who lets by parol, or written contract not under seal, to each parishioner his own tithes, is properly the occupier, and ought to be rated. (16 Vin. Abr. 427. And see *Chanter v. Glubb*, 4 Man. & Ryl. 334; 9 B. & Cres. 479.)

Parson who lets his tithes by parol should be rated.

Rex v. Lambeth, 1 Str. 525; 8 Mod. 61. The parson lets his tithes to farm; the farmer agrees with the tenant of the land that, in consideration of his paying so much, he shall retain the tithe and gather in the whole crop without dividing. Which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. The sessions discharge the lessee of the parson, and tax the tenant of the land. But by the court: "The order must be quashed. The farmer of the tithes is *prima facie* liable to the poor rates; and therefore unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol cannot enure as an under-lease of a thing that lies only in grant. Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined that makes him the occupier? Or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe: with this only difference that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe; therefore there being no colour to charge the tenant of the land, the order of sessions must be quashed."

The farmer of tithes, who holds the same under a deed and lets the tithes again is *prima facie* liable to the poor rate.

Chanter v. Glubb, 9 B. & C. 479; 4 Man. & Ry. 434, S. C. The plaintiff was lessee for years of the tithes of the parish of Haillard under a grant by deed from the impropriator. He agreed by parol with the respective occupiers of lands from year to year, and they retained their tithes. The agreement was prospective, and had no reference to the produce of the year. The plaintiff was assessed upon a highway rate in respect of his occupation of the tithes. During the argument, Lord Tenterden said, "The case of *Rex v. Lambeth*, (1 Str. 525,) shows that the parson, though he agrees that the tenants shall retain the tithes, is the occupier within the 43 Eliz. c. 2. If there is no distinction between the words of that statute and the highway acts, that authority is decisive against the plaintiff." And his lordship afterwards added, "In strictness of language there cannot be an occupier of tithe, tithe in its nature not being the subject-matter of occupation. Giving, however, a reasonable construction to these words as used in the highway acts, we must understand the occupiers of tithes to be the person who receives the tenth part of the produce of the land. Here the plaintiff was that person, and was therefore properly assessed for the repair of the highway." Bayley, J. "It is very desirable that in questions of this description there should be certainty, and that nice distinctions should not prevail. Here the money payment is the substitute for the tithe. Where the owner of the tithe grants out and conveys any of the tithe to another, that other is the occupier. Where the right continues in himself, he is the occupier. The plaintiff was therefore the occupier in the present instance." Littleton and Parke, Js. concurred. Judgment for defendant.

The lessee by deed of lay impropriator is rateable, though the occupiers retain their tithes.

So also in *Rex v. Wilson*, 5 Nev. & Man. 119, Patteson, J. observed that a vicar who has made a lease of his tithes (i. e. *under seal*) is not rateable.

Rex v. Joddrell, 1 Bar. & Adol. 403. The tithes of a parish had been extinguished by an act of parliament, and a corn rent given to the rector in lieu of it; and it was held that the rector was rateable for the tithes.

If tithes are extinguished the vicar is liable for the rent.

Tithes.

But if not extinguished, the occupier of the land is occupier of the tithes and rateable.

The rector is not liable, when the rent is to be paid "free of all taxes."

Such exemption must be express; not implied from extinguishment.

If one be entitled to the *tithe* of all fish caught in the parish, he is rateable in respect thereof.

In the preceding case the vicar was liable in respect of the rent, and the occupier of the land could not be rated as the occupier of tithes, because they were extinguished. Therefore where by a similar act the tithes were not extinguished, but the statute directed the occupiers of the land to pay an annual rent, the occupiers are rateable for the tithes, the tithes being transferred to them by statute; and tithes are not extinguished, because the land and the tithes are in the same hands. (a) (*Rex v. Great Hambleton*, 1 *Ad. & Ellis*, 145.)

The rector is in some instances exonerated from this burthen by an arrangement for the extinguishment of tithes in an Inclosure Act. Thus, where by such an act it was provided that a certain corn-rent, "free from all taxes and deductions whatsoever, except land-tax," should be issuing out of the lands to be inclosed and other lands in the parish, and be paid to the rector in lieu of all great and small tithes, &c., it was held that this corn-rent was not liable to be assessed to the relief of the poor. (*Mitchell, Clerk, v. Fordham*, 9 *D. & R.* 335; 6 *B. & C.* 274.)

So where a private inclosure act enacted that there should be issuing and payable to the vicar out of the lands a yearly sum, "free and clear of all rates, taxes, and deductions whatsoever," it was likewise held that the vicar was not rateable to the poor in respect of the yearly sum paid to him. (*Chatfield, Clerk, v. Ruston*, 5 *D. & R.* 675; 3 *B. & C.* 863.)

Where by an inclosure act it was provided that the tithes of a certain parish should be abolished, and that in lieu of them the commissioners should award to the rector a certain annual rent, equal in value to a certain portion of the lands in the parish; to be paid by the owners of those lands in such proportions as the commissioners should award; it was held that the rector was liable to be rated to the poor, in respect of this rent or annual payment, the act not having expressly exempted it from that burden. (*Rex v. Boldero, Clerk*, 4 *B. & C.* 467; 6 *D. & Ryl.* 557.) As to the proportion, see *Rex v. Joddrell*, 1 *Bar. & Adol.* 403, and other cases, *post*.

Rex v. T. Carlyon, 3 *T. R.* 385. The appellants were the proprietors of one-tenth of all fish caught and brought on shore within the parish, for which they and their tenants were rated. The only question made was concerning the rateability of fish, being a property yielding a certain annual profit. Lord Kenyon, C. J. "This question is decided by the express terms of 43 Eliz. c. 2, s. 1, which, after mentioning parsons and vicars in the number of the

(a) These cases confirm the observations which were made in the last edition of this work. The case of *Rex v. Lambeth* does not expressly decide the question, whether an incumbent, who grants a lease of his tithes, is still liable to be rated in respect of those tithes; or whether the burden is transferred with the right to take them upon his lessee. The legislature in making tithes *eo nomine* rateable, might studiously have it in view to include tithes, whoever might be the owner, knowing that if they were in *lay* hands they could not be reached by the words "parson or vicar" (see *Rex v. Lacy*, 5 *B. & C.* 709; 8 *D. & R.* 457); and as they are capable of being demised, and are in law a *tenement*, there seems no reason why the person to whom they are demised should not be regarded as the occupier for the purposes of the poor rate, in the same manner as the occupiers of lands are held liable to the rate in respect thereof, and not their landlords. In *Rex v. Turner*, 1 *Bott*, 126, *ante*, 154, 155, where the vicar had let out his tithes to the several persons from whom they were payable, and the sessions found that he was not the

occupier: the court held that those persons ought to pay the rate on the tithes, though Parker, C. J., thought the vicar ought to have been considered the occupier. Admitting that a mere *parol* agreement between the incumbent or tithe owner and the tithe payer, for a sum of money in lieu of tithe, passes no interest in the tithe itself, but only enures by way of retainer or discharge, the lessee, by deed, stands in a very different situation: he takes the interest of his lessor, becomes the beneficial occupier, in the sense in which the tenant of land paying rent is a beneficial occupier, and is on the same principle rateable. In the above case (*Rex v. Lambeth*), it is said, the farmer of the tithe is *primâ facie* liable, and it is also implied that this *primâ facie* liability can only be got rid of by showing that he holds by *parol* only. The inference is, that if he holds by deed duly executed, he is the person to be rated in respect of the tithe, and not the incumbent or impropiator; and this conclusion is warranted by the principles upon which rateability is determined in all other cases. See 1 *Eagle on Tithes*, 19.

persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate and appropriations of tithes*, in respect of which the rate is to be made, and indeed the spirit of the law coincides with the words of this statute; for the legislature intended that when rates were made, every person should contribute according to the benefit which he received within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said that only property which is *visible* should be rated; but I think it is carrying the rule of exemption too far; for oblations and other offerings which constitute the rectorial or vicarial dues are rateable." *Buller, J.*, "Supposing the fishermen are not rateable, *Rowls v. Gell* (post, 163,) governs this, for here the persons entitled to the tithe of fish run no risk, and their profits are certain, and for that they are rateable."

Oblations and other offerings are rateable.

9. MINES.—*Coal. (a)**Mines.*

By the express words of 43 Eliz. c. 2, s. 1, *every occupier of lands, &c. "and coal mines," is rateable.* The express mention in this statute of "*coal mines*" has been considered to be a *virtual exception* of all other mines. The *adventurers* or occupiers of metallic mines, &c. are therefore not rateable. (See the supposed reason why the adventurer was exempted, *Rowls v. Gell*, Cowp. 451, post, 163.) Nor the *owner*, though an inhabitant of the parish, if he receives a *money rent*; but *when he receives a portion of the raw mineral without incurring expense or risk, he is then rateable*, and it seems as the occupier of so much *land*. It is difficult to understand how the owner could be said in this case to be the *occupier of land*, and even if he be the occupier of land, he is the occupier of a mine, which is virtually excepted out of the statute.

Whether a *particular excavation* is a *mine* or a *quarry*, depends on the mode of working, and not on the mineral produced.

Rex v. Parrott, 5 T. R. 593. Case:—The *appellants* are in possession of the colliery, (for which they are rated,) *under a lease*, by which they were bound to work the colliery, and to pay a sixth part of the money produced by the sale of the coals, without any deduction for the expense of working; upon an average of the last three years, the appellants paid 300*l.* 15*s.* 7½*d.* as a sixth part of the produce of the coals sold, and that they lost two and a half farthings on every ton of coals; the colliery always was and still is a losing adventure from the first of their taking it; and they must have known it at the time they took it; and their inducement for taking it was, that when they had worked out the coal in this colliery, they would be able to get at coal of their own, which was adjoining; and this was a cheaper way of getting at it than any other which they could have adopted. Lord Kenyon, C. J. "It is said that this burthen is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. This case differs from *Rowls v. Gell* in this respect; that was the case of *lead mines*, which are not rateable under the statute of Eliz., and there the question was, whether or not the lessee were rateable for certain annual profits which he received without any risk on his part? Of the decision in that case it is not necessary for me to say any thing at present.(c) I will form my opinion upon that question when it arises again. But here the property is rateable under the express words of 43 Eliz. c. 2. It appears in the case that there has been a clear profit of 1000*l.* a year since the lease was granted; and the question is, whether the appellants, who are occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is, that they have made an unprofitable bargain with the lessors;

The lessee of a coal mine rateable, although he derive no profit from the mine.
(b)

(a) Definition of mines, *Rex v. Foleshill*, 4 Nev. & M. 360; *Rex v. Dunsford*, 4 Nev. & M. 349. And see note (a), post, 158.

(b) A lessor who receives a money

payment is not within the act; *Rex v. Tremayne*, 1 Nev. & Man. 198.

(c) He had previously approved of it in *Rex v. St. Agnes*, post.

Mines.

Coal mine ceasing
to be productive,
is not rateable.

but we cannot examine into that; it being sufficient to make them liable, that they are the occupiers of rateable property." Order of sessions confirmed.

Rex v. Bedworth, 8 East, 387. J. W. was assessed for a colliery, as of the annual value of 200*l.*, at 5*l.* Case:—The colliery was demised for a term of years to W., at 200*l.* annual rent, whether coal should be gotten or not: and the coals were totally exhausted, and the mines ceased to be worked. Lord Ellenborough, C. J. "In that case (*Rex v. Parrott*, ante, 157,) the subject-matter itself was profitable, and produced value to the owner, though the immediate occupiers derived no profit from it. But here the mine itself is exhausted, the subject-matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce of the whole term, be still payable. But with respect to the parish, he is only rateable for the concurrent annual value during the period for which the rate is made; and when the thing which he occupies no longer affords any such concurrent value, the subject-matter of the rateing is gone."

Other Mines. (a)

Iron mines not
rateable.

Rex v. Cunningham, 5 East, 478. A rate upon "iron and coal mines" was quashed, because iron mines are not rateable, and ought not to have been rated jointly with coal mines.

Lead mines not
rateable.

Governor and Company for smelting Lead v. Richardson, 3 Burr. 1341; 1 Bla. Rep. 389. The defendant had distrained for the poor rate assessed on the occupiers of the lead mines lying in Alston. The plaintiffs were lessees from Greenwich Hospital; they worked the mine, but did not live in Alston; the profits of the hospital that year amounted to 1900*l.*, but those to the plaintiffs were precarious and uncertain, and some years they gained nothing; no lead mines had ever been assessed, except in an instance or two since making this distress. By Lord Mansfield, C. J. "The question is no

(a) *Coal mines.* The occupier of coal mines is rateable to the poor at the sum for which the mine would let, subject to outgoings. The lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance to be made for money expended in rendering the mines productive. (*The King v. Attwood*, 9 D. & R. 328; 6 B. & C. 277.) Coal mines alone being expressed in the statute, it has been holden that mines of other minerals are not within it, and cannot be rated. (*Lead Smelting Company v. Richardson*, 3 Burr. 1341; 1 Bla. Rep. 389.) Consequently the occupiers of a lead mine (*idem.*) or iron mine (*Rex v. Cunningham*, 5 East, 478), are not rateable for them, nor for an engine erected for the purpose of drawing the water from an iron-stone mine, if used for no other purpose (*Rex v. Bilston*, 5 B. & C. 851; 8 D. & R. 734, S. C.); nor are the landlords who let them to the occupier liable to be rated for the money rent (*Rex v. Bishop of Rochester*, 12 East, 353; *Rex v. Wellbank*, 4 M. & Sel. 222), or rent in the smelted metal of the mines (*Rex v. Earl of Pomfret*, 5 M. & Sel. 139), which they receive for them. But the owners of mines are holden to be rateable for the portion of the ore raised, which they receive by agreement from those who work in the mines; in

lead mines called lot and cope (*Rowls v. Gell*, Cowp. 451); in tin mines, toll tin and farm tin (*Rex v. St. Agnes*, 3 T. R. 480; *Rex v. St. Austell*, 5 B. & Ald. 693; 1 D. & R. 351), or the like (see *Rex v. Baptist Mill Company*, 1 M. & S. 612); although they receive by compromise from the tenants, not the ore itself, but the estimated value of it in money (*Rex v. St. Austell*, supra); for here is a reservation of part of the thing demised, which operates, not as a render, but as an exception out of the demise. (See *Co. Lit.* 47 a, 142 a.) In the case of coal mines, the occupiers of them are liable to be rated for them as long as they continue to work them, whether they produce a profit or not (*Rex v. Parrott*, 5 T. R. 593); but they are not rateable for them before they are worked and productive (*per Lord Ellenborough*, C. J., in *Rex v. Bishop of Rochester*, 12 East, 353); nor after they cease to be worked (*Rex v. Bedworth*, 8 East, 387). Stone quarries or lime works (*Rex v. Alberbury*, 1 East, 534; 1 Bott, 223); slate works (*Rex v. Woodland*, 2 East, 164; 1 Bott, 228); a potter's clay pit (*Rex v. Brown*, 8 East, 528), and the like, are sometimes considered as mines, and sometimes as land rendered additionally productive by a particular mode of using it; and the manner of working is the criterion whether it is a mine or quarry.

more than this: whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 Eliz.? Now nothing can be clearer than that these mines are not within the *letter* of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expense than coal mines are. And at that time, all copper, lead, and tin mines, in Derbyshire, Cornwall, and Mendip in Somersetshire (which are the only counties where works of that kind were then established,) were governed by particular laws; whereby any stranger, conforming to the ceremonies thereby required, was at liberty to work those mines without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expense, and often ruined the projectors, it is no improbable conjecture that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this public utility, to except them from any other burthen or imposition than those that the miners' law had imposed. Indeed, *if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land*. But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated." Mr. Justice Denison was of the same opinion. By Mr. Justice Wilmot. "Another thing which convinces me that the legislature meant only to include *coal mines* is, that in stat. 31 Eliz. c. 7, concerning cottages, they have used the words *coal mines and all other mineral works*; which plainly shows they never understood that coal mines would comprehend other sorts of mines."

Rex v. The Bishop of Rochester, 12 East, 353. A lease of 30th of May, 1805, was made between the Bishop of Rochester and other trustees, and A. Surtees, whereby the trustees demised "all the mines, veins, &c., wastes of lead ore and other minerals, and also all the seams of coal then open or discovered, or which should or might, during the time therein mentioned, be opened or discovered, in the township lands called Nuckton, in the parish of Hunstonworth, with full liberty to dig and search for pits, &c.; to hold the demised premises for 21 years, *yielding and paying therefore yearly, during the said term, unto the said lessors, their heirs, &c., for and in respect of the said lead ore and other minerals, the clear yearly rent of 100l.*" There were also reserved, by way of rent, certain proportions of such lead ore as should be gotten from and out of the said mining grounds. There was also a separate rent reserved for the coals when wrought, and a rent for damages done to the ground tenants. The lessees were bound to pay all taxes parliamentary or parochial. No coal mines had been wrought within these grounds. The lessees had other lead mines in the neighbourhood, but had gotten no ore from under the grounds mentioned in the lease, and consequently no proportion of lead ore had been rendered or become due to the lessors. The lessors were rated in 50l., being a moiety of the rent of 100l. reserved by the lease, and which was a fair proportion for that part of the mining ground which is in the parish of Hunstonworth; and the lessors, if liable at all, did not object to the fairness of the apportionment. The rate was: "Lord Crewe's trustees for certain annual rent paid them by Easterby, Hall and Co., *for the liberty of opening the mines within their lands, spoil of ground, &c., 50l.—Rate, 8l. 15s.*" None of the lessors reside or have any dwelling-house in the parish. The lessees were not rated in respect of the demised mines. Lord Ellenborough, "The trustees can only be rated as inhabitants or as occupiers within the parish. We have so recently (*Rex v. Nicholson, ante*, 150; *Williams, v. Jones, ante*, 152;) put a construction upon the word *inhabitant* in the statute of Elizabeth, as meaning a *resident* within the parish, that it is

Landlords not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig, &c., reserving a certain annual rent, and also certain proportions of the ore which should be raised, are at any rate not assessable to the relief of the poor for such certain rent on ore being raised, whatever the question might be as to the proportion of ore reserved when in fact any should be raised. (a)

(a) And see *Rex v. Tremayne*, 1 Nev. & Man. 194, S. P.

Mines.

unnecessary to discuss the matter again; and the fact of such inhabitancy is negatived by the case. Neither are they *occupiers* of the property for which they are rated: so far from it, that they cannot maintain trespass for any injury done to property which they are supposed to occupy: and even if they were the actual occupiers of coal mines, they would not be rateable for them before they were worked and productive. (See *Rex v. Bedworth*, ante, 158.) But this is no more than a contract with tenants for the payment of a certain rent for ores supposed to lie under the surface; and if the tenants should open the ground and raise the ore, reserving a certain proportion of ore to the ground landlords; there is no occupation of any thing within the statute. If hereafter the tenants should open the ground and raise the ore, the trustees will then be entitled to certain proportions, and such profits may come within a different rule, as lot and cope: upon which no question at present arises. *Grose and Bayley, Js.*, agreed. *Le Blanc, J.* "If the trustees were rateable at all, it must be as occupiers of the mines, or some proportion of them; but here they are rated as for a *rent eo nomine*, for which, if they were rateable, every landlord might by the same rule be rated for his rent." Order quashed. And see *Rex v. Tremayne*, 1 Nev. & Man. 194, S. P.

The landlord of the mine is not rateable where smelted ore is reserved as rent.

Rex v. The Earl of Pomfret and others, 5 Maule & S. 139. Lord Ellenborough, C. J., delivered judgment. "The appellants were the owners of the lead ore in certain lead mines within the township; not owners of the soil of the wastes in which the mines are situate, but merely entitled to the lead, copper, and iron contained in the veins below the soil. By a lease of the 31st of July, 1811, the appellants leased to Messrs. Alderson all their mines of lead and lead ore, with certain smelting mills and other premises therein described, and with proper powers for working the mines for twenty-one years, yielding and paying to the appellants a certain pecuniary rent therein mentioned, and also yielding and paying, rendering and delivering, at or in the smelting-mill or place situate within the manor of Healaugh Old Land and Healaugh New Land, where the same should have been smelted, *one full fifth part, dole, or share of all the best ore, earth, lead, and one full fifth part, dole, or share of all the slag or slag earth lead* that should be smelted from the ore raised from the mines and premises, the same to be delivered to the appellants free and clear of all dues, duties, costs, charges, and expenses, and from the poor-rates, and all other parliamentary and parochial taxes, &c., or in respect of the said lead or lead ore so to be delivered as aforesaid, or in respect of the said mines and premises. The lease contained a covenant on the part of the lessees to deliver the fifth dole or share *as often as the quantity smelted should amount to 400 pieces*, or at the end of every four weeks, at the option of the lessors. The rate was imposed upon the appellants in respect of the duty lead reserved by the above lease. This case was argued before us with great ingenuity and learning, and all the authorities that bear upon the point were cited in the course of the argument. The counsel in support of the order of sessions relied on *Rowls v. Gell*, Cowp. 451; *Rex v. St. Agnes*, 3 T. R. 480; and *Rex v. The Baptist Mill Company*, 1 Maule & Sel. 612; and contended that this case was not substantially different from that of *Rowls v. Gell*, which had been recognized and followed in the two other cases, and that we ought not to depart from the principle there established upon nice and subtle distinctions. We are of opinion, however, that the present case is substantially different from all of them, and that a decision against the present rate will not break in upon the principle or overturn the authority of any one of them. In all those cases the rights of the parties rated, who were the owners or lessees of the mines, and of the adventurers or miners by whom the mines were worked, depended upon the particular custom of the place; and by that custom the parties rated were entitled to and received a certain portion of the mine or mineral in its primitive mineral state; and the Court, with perhaps some degree of refinement, considered the parties entitled to and receiving such portion of the minerals as being occupiers of a portion of the mines, that is, occupiers of land within the terms of the statute of Elizabeth; and in the case of the *Baptist Mill Company*, made, in part of the foundation of their judgment, that the adventurers did not stand in the relation of tenants to the owner of the mine, but in that of mere workmen. It is true that in

Rowls v. Gells, the mineral underwent some sort of process before it was delivered to the plaintiff, for the case states that the duty of lot was the 13th dish or measure of lead ore got, dressed and made merchantable, which we understand to mean, made merchantable by scouring or dressing, a process thereby separating the ore from the other matters dug up with it from the mine, but not altering in any degree its original and native quality or character. The plaintiff in that case was also rated for cope, which is explained to be a small pecuniary payment; but no notice was taken of that circumstance in the argument or judgment, nor could it have been effectually taken, because if the plaintiff was rateable for the lot, he would of course have some rateable property within the parish, and consequently his action of trespass could not be maintainable. In the case of *Rex v. St. Agnes* (post, 163), the party was entitled to toll and farm tin, which are stated to be certain portions of the tin gotten. In the case of the *Baptist Mill Company* (post 164), the party was entitled to a definite portion of the calamine stone found or gotten within his district. In the present case, the rights of the parties rated, who are the appellants, and those of the persons by whom the mines are worked, depend upon the terms of a written contract, a lease; by the terms whereof the appellants have demised to others the whole of their mines and veins of lead and lead ore; and therefore they cannot be said to be the occupiers of any part, unless the render or reservation of one-fifth part of the lead to be smelted from the ore raised from the mines, can operate as an exception of a portion of the mines, or of the ore raised from them. A reservation of a part of the thing demised cannot properly operate as a render, and it may be admitted that it operates as an exception. See *Co. Litt.* 47 a, 142 a. But this is not a reservation of any part of the thing demised; it is not a reservation of any part of the ore, or of the mineral, in its natural and primitive state, but of something of a quality, name, and character, entirely different,—of a metal, produced from that mineral, by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter, viz. with coal or charcoal; and by the effect of fire upon both, a metal is obtained, which is to be considered, for this purpose at least, as entirely different from either of the two, and rather as a manufacture of art and labour, resulting from the use and application of those materials, than the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants. The reasons upon which the Court relied in *Rex v. The Baptist Mill Company*, do not apply to this case; but it is brought substantially within the principle of the case of *Rex v. The Bishop of Rochester*, 12 East, 353. For these reasons, we are of opinion that the appellants were not liable to be rated for the lead rendered to them under the lease.

Rex v. Welbank, 4 M. & Sel. 222. The defendants were rated thus: The trustees under the will of G. Browne for 2000*l.*, annual rent paid by the Arkengarthdale and Derwent Mine Company, for two-thirds of the Arkengarthdale lead mines, and other minerals and fossils (except coal), within the parish of Arkengarthdale, and also in respect of their being owners and occupiers of the moors and wastes within the manor of Arkengarthdale. Amount, 2000*l.*; assessment, 150*l.* (being 1*s.* 6*d.* in the pound.) Lord Ellenborough, C. J. "This rate appears to be ill on this single ground, that it is a conjoint rate in respect of two things, one of which is not rateable. The rent is clearly not the subject of rate, the other may or may not be. But it cannot be good as a conjoint rate." *Le Blanc*, J. "If these trustees had been rated in a large sum in respect of their being the owners and occupiers of the moors, commons, and wastes, equal to the profits they derive from the mines, perhaps the Court might have said, we will not enter into the question of proportion; but here the rate is imposed in respect of two distinct properties, namely, the rent, and the surface of the land."

Rex v. Tremayne, 4 B. & Ad. 162; 1 Nev. & Man. 194, S. C. The owners of certain lands granted to adventurers for twenty-one years a liberty to dig for manganese, and drive adits, &c., receiving 1*l.* 15*s.* for every ton of manganese raised during the term, free of all expense of raising and

Where trustees were rated in one gross sum for rent of mines, and also in respect of their being owners and occupiers of the moors and wastes, the rate was held bad.

Where the owner, without rent, receives 35*l.* for every ton of manganese raised, he is not rateable.

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dressings: all other mines and quarries were excepted. The adventurers opened a mine, and erected buildings, &c. at their own risk and expense; and they are in the exclusive occupation of them. Considerable quantities of manganese had been raised and sold by the adventurers, and 1*l.* 15*s.* regularly paid to Mr. Tremayne, the owner, for every ton so raised; and for this Mr. Tremayne was assessed. The form was: "For manganese dues." During the argument in support of the rate, it was urged that Tremayne had reserved every thing but a liberty to dig. [Parke, J. "What portion of the soil does Tremayne occupy?"] He occupies the land that produces the ore. [Parke, J. "He has no right to any portion of the rude ore;" and afterwards added, "The decisions relied on, proceeded on the ground that a certain portion of rude ore was reserved to the lord. If Tremayne, as is contended, is the occupier of the mine, then as such he is not rateable."] Argument: In *Rowls v. Gells* (post, 163), part was a pecuniary rent. [Parke, J. "That distinction was not pressed on the attention of the court, and the principles on which such property is rateable were not so well understood as they are now."] Without hearing the counsel on the other side, Denman, C. J. said "The rate cannot be supported. Here the landlord receives a rent, and is not the occupier of the soil, as in *Rowls v. Gells*. (a) In *Rex v. St. Austell*, (b) the landlord, by the express terms of the grant, was to be paid, not by money, but by the produce of a part of the mine, unless he elected to be paid in money: here he is paid by a sum of money in proportion to the weight of manganese raised, but he has no right to any portion of the ore. If we had any doubt we would permit the rate to stand, that the party rated might bring an action; but we have no doubt whatever, the order of sessions must therefore be quashed." Parke, J. "A party can only be rateable as the occupier of land. Here Mr. Tremayne is not the occupier of the soil; he receives a money rent. The case falls within *Rex v. The Earl of Pomfret*. (c) It is said that no interest in the land passed, but a mere authority to the grantee to dig. That may be so; and in that respect the case resembles *Rex v. St. Austell* (post, 165), but then it would follow that Tremayne is himself the occupier by his agents; and if so, as the owner of mines, he is exempt from rateability by the statute of Elizabeth and the nature of the property, and he could not be rated unless for dues. This case is distinguishable from *Rowls v. Gells*; (d) *Rex v. The Baptist Mill Company*; (e) and *Rex v. St. Austell*; (f) because here the owner is not entitled to any portion of what may be called the soil. The ground of the decisions in those cases was, that the reserved ore was a portion of the soil, and that the party entitled to it was therefore the occupier; but here, if he was not entitled to that portion of the soil, he is not the occupier; and then this is like the case of *Rex v. The Earl of Pomfret*, (c) where the reservation was not of a part of the soil, but of something different; and is distinguishable on that ground from *Rex v. St. Austell*, and the other cases, where a portion of the mineral was received." Taunton, J. "I entirely concur. The distinction is very subtle; but the cases may perhaps be reconciled by distinguishing between a reservation of a rent and a reservation of part of the soil itself. In the latter case the lessor has been considered as occupying that part of the soil which he has not reserved. Here there is a pecuniary rent reserved, and no reservation of any part of the soil. If we were to hold that Mr. Tremayne was rateable here, we should be shaking a well-established principle, that a landlord is not rateable for his rent. And, again: if Mr. Tremayne is to be considered as the occupier of the soil of the mine, and the lessees as his agents, he is not liable to be rated, because coal mines are the only mines mentioned in the statute of Elizabeth, which has therefore been construed to exclude all others." Patteson, J. "I am of the same opinion. The rule is very clearly laid

(a) Cowp. 451; post, 163.

(b) 5 B. & Ald. 693; 1 D. & R. 351.

(c) 5 Maule & S. 139.

(d) Cowp. 451.

(e) 1 M. & Sel. 612.

(f) 5 B. & Ald. 693; 1 D. & R. 351.

down by *Le Blanc, J.* in *Rex v. The Baptist Mill Company*, (a) 'Where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent or money payment, there he is not an occupier.' Here Mr. Tremayne is not the receiver of what is extracted from the bowels of the earth, but of money; he is not liable therefore to be rated as an occupier of land." Order of sessions quashed.

Rowls v. Gell, Cowp. 451. Rowls was lessee under the crown of all lead mines, with their appurtenances, within Wirksworth, with the *lot* or *cope*, and was assessed for the same in the rate of 500*l.* a year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, got, dressed, and made merchantable, at all the lead mines within the soke; and *cope* is sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to and received by the plaintiff without any risk or expense in working the mines; and in that year wherein they were assessed, amounted to the clear sum of 500*l.*; but they are uncertain, and vary every year. All persons have a right to dig for and get lead ore in the said soke and wapentake, conforming to the custom there; and the miners are entitled to a certain quantity of land above and on each side of such mine. Lord Mansfield, C. J. delivered the resolution of the court. "The poor's rate is not a tax on the land, but a personal charge in respect of the land. The present is a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead mines* are not within the statute of the 43 Eliz. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes, therefore, upon the adventurers, would be hard, and they are therefore excused. But he, who in case they do prove of value, receives a stipulated benefit from the profit or value of them, is not excusable on the same ground, and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor-rate for his visible real property in the parish; though, where the poor-tax is a charge on the lessee, the landlord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light, because the lord pays, not for that which the lessee or adventurer is excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as such obligatory payment is in respect to the land, the landowner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expense, or possible risk. Therefore we are all of opinion that the plaintiff is liable to be rated for this property."

The lessee of a *lead* mine under the crown, with the *lot* and *cope*, is rateable in respect of the *lot* and *cope*.

The reason why mines are not in general rateable.

Rex v. St. Agnes, 3 T. R. 480. This was an appeal against a rate because Andrews and Donnithorne were not rated for their tolls of tin. The sessions quashed the rate. J. P. Andrews, as trustee of J. Enys, is entitled to a certain dish or measure arising out of certain lands and tin bounds in St. Agnes, called *toll* and *farm tin*; which toll is one-fifteenth part of all the tin gotten in the lands of J. Enys, within the parish of St. Agnes; and which said *farm tin* or *due* is one-twelfth part, after the said fifteenth part is deducted, for toll of all such tin so gotten within the tin bounds in the parish; and which said dues or duties are due and payable by the laws and customs of the

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The lessees under the lord of the manor of lot and free share of all calamine raised within the manor, are liable to be rated to the poor, as occupiers of land in the parish where the manor lies; none of them being resident in the parish.

Stannaries of Cornwall, free and clear of all risk and deductions whatsoever; but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And N. Donnithorne is entitled to a certain dish or measure called *toll tin or dues*, arising out of certain lands in St. Agnes, and due and payable in the manner before stated, and which toll varies, and is uncertain, but also produces a considerable sum annually. Lord Kenyon, C. J. said he approved of *Rowls v. Gell* and *Rex v. Maddern*, though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions, which was confirmed.

Rex v. Baptist Mill Company, 1 M. & S. 612. The defendants were rated in the parish of Rowberrow, for "lot, toll, and free share of the calamine, and for calamine yard and barn;—amount 9*l*." The sessions amended the rate by expunging "the calamine yard and barn," and assessing the "lot, toll, and free share of the calamine." They were lessees of a lot, toll, or free share of all calamine, or *lapis calaminaris*, raised in the parish of Rowberrow, in the proportion of one part in four; they are not, nor were at the time of making the rate, in the occupation of any land or buildings whatsoever within the parish of Rowberrow, unless the court shall be of opinion, as the sessions were, that the lot, toll, and free share above mentioned, are to be considered as land; all the lessees reside in Bristol; they run no risk, nor incur any expense whatever, and have, since the commencement of the lease, received a quantity of calamine, of considerable value, as the lord's lot, toll, or free share. Lord Ellenborough, C. J. "If these lessees of lot, toll, and free share are rateable at all, it appears to me they must be rateable as for property falling under the description of land. There appears to me to be a demise of a specific portion of the produce of the land, or in other words, land itself, free from risk or uncertainty; it is by the express terms of the finding stated to be an interest without risk. We might, otherwise, have been pressed with the question, whether the naming coal mines in the statute, was, according to the rule, *expressio unius exclusio alterius*, to all intents an exclusion of other mines; or was only put for example, as the naming a class in the statute of *circumspecte agatis* (2 Inst. 487): for certainly the judges who have held it to amount to the exclusion of other mines, have generally coupled it with this reason, that other mines are subject to risk. Now here the portion of calamine is divested of risk; it is the clear profit to which the lord is entitled, independent of any contingency; the whole is raised by the labour of the adventurer, and, when raised, the lord may be considered as working with the adventurers by the hands of the labourers; but, when raised, the lord's share redounds to him. That constitutes land, and may be fairly construed as such within the meaning of this statute. The case of *Rowls v. Gells* (*ante*, p. 163), and the other cases, do not admit of any distinction comprehending this case. This is not merely a demise of a personal chattel, of the ore after it is gotten, but of the ore which is to be gotten, and which is part of the solid mass of the land; therefore, under that description, it is assessable in the hands of the occupier." *Le Blanc*, J. "I concur in opinion with my lord, that this property is rateable to the poor. In *Rowls v. Gells*, and *Rex v. St. Agnes* (*ante*, p. 163), the rate was confined to the person in respect to the toll-dish of lead and tin raised; here the owner of the land is entitled to a certain portion of the ore when raised, which he lets, or allows persons to stand in his place as to that share: and we will not inquire whether this were a legal demise, for he authorizes them to receive, and they do receive it. They stand, therefore, in the situation of the lessee in *Rowls v. Gells*, and the person entitled in *Rex v. St. Agnes*. But subsequent cases have been cited, in which it is supposed that the authority of *Rowls v. Gells* and *Rex v. St. Agnes* has been disturbed; which supposition is only raised by laying hold of particular expressions of the court to be found there. The cases of *Williams v. Jones*, and *Rex v. Nicholson* are totally different; for those were the profits of a ferry, arising out of a right to convey passengers over a river: it was impossible in

those cases to say that the persons were occupiers of any thing but the boat and tackle in which the passengers were conveyed, in the same manner as a stage-coachman is the owner of his coach; it was therefore impossible to make the doctrine of *Rowls v. Gells* bear on those cases. Viewing all the cases on the subject, and the principle upon which *Rowls v. Gells* was decided, and likewise the public convenience, as it regards this species of property, and not seeing that the original construction on the words, occupier of land, may not comprehend a person so far an occupier as to receive a portion of the land discharged of any risk, I cannot say that this company is not rateable."

Bayley, J. "I am of the same opinion. I cannot distinguish this from the case of granting a share in the land, which is not co-extensive with the entire interest. It is not doing any violence to this lease to consider the lessees under it as occupiers of land. I lay out of consideration all the cases in which it has been holden that adventurers are not liable." Order of sessions confirmed.

Rex v. St. Austell, 5 B. & Ald. 693; 1 D. & Ryl. 351. T. Carlyon, Esq. appealed against the following assessments:—Rates on tin and copper dues, and water-courses: T. C. for Crinnis copper dues—annual return, 4080*l.*; amount taken at two-fifths, 1632*l.*; assessment at 3*s.* in the pound, 244*l.* 16*s.* The sessions struck out this assessment. Mr. Carlyon was not an inhabitant of St. Austell, nor the occupier of any land or other property therein, unless he was deemed to be such occupier in respect of the dues: by indenture made 12th January, 1811, he granted unto Rowe, &c., full and free liberty to dig, work, mine, and search for tin, tin ore, copper, copper ore, and all other metals and minerals whatsoever, in that part of his lands called Crinnis, in the parish of St. Austell, and the same to take to their own use: and within the limits of the set thereby granted, to make adits, shafts, &c., and to erect sheds, &c.: *habendum* for twenty-one years: yielding and delivering upon the grass, unto T. Carlyon, one full eighth part or share, or dish, of all tin, tin ore, copper, copper ore, lead, lead ore, and other metals and minerals which should, by virtue of the said indenture, be found and brought to grass within the limits thereby granted; the same having been first made merchantable and fit to be smelted and fairly divided, and laid out upon the grass at their cost and charges. It contained a covenant to pay or deliver unto T. Carlyon, or his toller or agent, the full and just one-eighth part, share, or dish therein reserved; or pay the same in money, at the election of T. Carlyon, at such best price as the same could be sold for, within two months at farthest, after such metals should be returned and sold. The lessees were to pay all rates and taxes imposed upon the tin, &c.; and the money which should arise from the sale thereof, or the dues thereby reserved, or upon T. Carlyon, in respect thereof, and indemnify him from the same; and would effectually work the premises in the most proper and effectual manner, with a sufficient number of labouring miners, unless prevented by water or other inevitable impediment. By virtue of this grant, the mine had been worked ever since the date thereof, by Rowe, without expense or risk on the part of T. Carlyon. Works had been made, and houses built by the adventurers at a great expense; and the mine and all workings had always been, and still are, in the sole occupation of the adventurers. The mine is now declining; but considerable quantities of copper ores had from time to time been raised from it: the whole of which, after undergoing several processes at an expense varying from 1*s.* to 6*s.* and 7*s.* in the pound, and even to 15*s.* when cleansed for the purpose of separating them from earth and other substances, and rendering them fit to be smelted, but by which process the original and native quality of the ores themselves is not altered, had from time to time, before the same were calcined or smelted, been sold or disposed of by the adventurers, without any controul or interference by Carlyon. No part of the ores raised had ever been rendered to Carlyon in kind; but in lieu thereof, one-eighth part of the money, arising from the sales of the ores, had been hitherto paid to him. He had been from time to time rated to the poor of St. Austell in respect of such one-eighth part of the money, and had paid the several assessments. *Abbott, C. J.* "I am of opinion that in this case Mr. Carlyon is liable to be rated for the

The reservation of one full eighth share of all tin, tin ore, &c.; the same having been first spalled, picked, or otherwise made merchantable, and fit to be smelted, renders the owner rateable although the clause contained a power either for payment in ore, or the amount thereof in money, which had been acted upon; and the owner had received it in money.

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dues in question. I am unable to distinguish this case from *Rowls v. Gell* (*ante*, 163), and *Rex v. The Baptist Mill Company* (*ante*, 164), and I think, therefore, that we ought to decide conformably to those authorities. Notwithstanding all that has been urged upon this subject, I cannot distinguish between the cases where a party takes an interest under a specific contract, as in this case, and where the adventurers work under a custom previously existing throughout a district. The case is distinguishable from *Rex v. The Earl of Pomfret* (5 M. & S. 139, *ante*, 160), in two respects; first, because there was an actual demise in that case of all the mines, under which the possession, both of that part which was worked and that which was not worked, passed to the lessees; but here there is an express reservation of part. In the second place, the share reserved to the lord in *Rex v. Earl of Pomfret* was of smelted lead; but here the reservation is of part of the native mineral. On these grounds, it seems to me that we ought to decide in favour of the rate; and I do that with the less reluctance, because it is still open to the party to institute an action against the person who may levy for the rate, and so to bring the question before a higher tribunal." *Bayley, J.* "We ought to lay out of the question the circumstance of this being a failing mine. For it is a beneficial and useful property to the person on whom this rate has been made; and it was held in *Rex v. Parrott* (5 T. R. 593), that a coal mine, whether profitable or not, is still rateable. In *Rowls v. Gell* it was first decided that a party was rateable for lot and cope. It is said, indeed, that the party rated there was a lessee. That distinction makes no difference, for if the lot and cope had not been rateable in the hands of the original proprietor, it would not have been so in the hands of his lessee. The true ground of that decision was, that the party was there considered as an occupier of the land. *Rex v. St. Agnes* (*ante*, 163), proceeded on the same ground; and in *Rex v. The Baptist Mill Company*, (at the time of which decision this court were peculiarly familiar with the words of the act of parliament,) it was determined that the lessees under the lord of the manor of his lot and free share of calamine were liable to be rated as occupiers of land; and the decision went on the ground that the lord of the manor would, but for the lease, have been rateable for it also, for the court considered him as occupying the land by the hands of the adventurers. The latter were to work the mine, and he was to receive part of the ore gotten, and the court considered him as joint occupier with them. In *Rex v. The Bishop of Rochester* (*ante*, 159), the mine was let; and whether it was worked or not, still the bishop was completely out of possession of it, and the adventurers worked for their own exclusive profit. There the rent reserved was a money-rent, and the relation between the parties to the contract was that of landlord and tenant, and all that the bishop of Rochester had was the reversion of the land. But in this case the adventurers have not the sole and exclusive occupation of the mine; they have only the sole and exclusive privilege of working it. This is not the conveyance of any interest in the mine till it is actually worked. It is a privilege only to dig for ore, and then on the terms of leaving a certain portion of that ore in a fit state for the landlord. It seems to me, therefore, that, according to the authorities to which I have referred, Mr. Carlyon must, in this case, be considered as the occupier of land, and, therefore, that he is liable to the present rate." *Holroyd, J.* "In the view I have taken of this case, I entirely agree with the rest of the court. The case of *Rowls v. Gell*, although it was doubted by Lord *Kenyon* in *Rex v. Parrott*, seems to me to have been well decided. It was confirmed by *Rex v. The Baptist Mill Company*, from which I cannot distinguish this case." *Best, J.* "If it were true that we must either overrule *Rex v. The Baptist Mill Company*, and the cases confirming the decision, or the case of *Rex v. The Earl of Pomfret*, I should be inclined to support the former. But it is not necessary, inasmuch as there is a material distinction between them. Here it seems to me to be clear that Mr. Carlyon is an occupier of land. All that the adventurers take under the indenture, is a license to enter and dig and take away the minerals. But when they have so done, and the minerals are brought to grass, a division of the ore between them and the

landlord takes place. This, then, is the same as if, instead of working for wages, they worked on condition of being paid by a certain share of the produce." Order of sessions quashed.

Mines.

Quarries.

Quarries.

Limestone mines are not rateable.

Mode of working interior of mine or quarry.

Rex v. Sedgeley, 2 B. & Ad. 79. The Earl of Dudley was rated as the owner and occupier of lands in Sedgeley, containing *strata of limestone*, and also of the works, by and out of which the limestone is raised. The strata of limestone under these lands lie in a sloping position, and one stratum distinct and a considerable distance from the other, in the same manner as coal, ironstone, &c. The strata frequently crop out or terminate at the surface, and deepen in the opposite direction. Those parts of the strata which cropped out or terminated at the surface were worked by the appellant and his predecessors, in quarries, by day-light or open work, following the course of the strata as far as was practicable. The continuation of these strata, which were being worked at the time the rate was made, lie forty or fifty yards below the surface of the ground, and are worked in large excavations by means of pit shafts, steam engines, &c., in the same way as coal, ironstone, and other minerals, and no part of the limestone is now gotten in quarries or by open work. The produce is in part drawn up the pit shafts and in part sent off by an underground level or tunnel. The only difference between these lime-works, and coal and ironstone mines, is the position of the strata, the material gotten out, and the greater excavations in the former than in the latter. The only way into these mines or works is down the shafts or through the tunnel, which is wholly underground, a great part of it being upwards of fifty yards below the surface of the ground, the deepest part being at its junction with that part where the limestone is gotten. The limestone is gotten in large excavations made in the direction in which the strata run, which excavations communicate by headways or gate roads with the bottom of the shafts, and the works are lighted by candles or lamps, no part being open to day light. The working requires experience, and is carried on by persons who are brought up to the occupation, and are called limestone miners or limestone getters, as often one as the other. The limestone is conveyed along railroads from the part of the works where it is gotten, through the gate roads, one part to the bottom of the pit shafts, and the other part to the level or tunnel. That which is taken to the bottom of the pit shafts is drawn up by the steam engines, and the other part is sent off in boats along the tunnel. By far the greater portion of the lime stone gotten by the appellant is sold in its raw state to the iron-founder for smelting iron, but a small portion (which by agreement is taken at a hundredth part of the whole) is burnt into lime by the appellant on his own land. There is no difficulty in finding the limestone, the pits being sunk, engines erected, and levels and tunnels made, and the mines or works opened and in operation. The profits of the appellant are certain, though subject to variations in consequence of frequent breakings off of the strata, and their being thrown into different directions, these increase the difficulty and expense of working, and render a fresh opening necessary. Limestone strata were lately found and worked in an adjoining parish to Sedgeley, at a depth of more than a hundred yards below the mines of coal and ironstone. The coal and ironstone in that case were first gotten, and afterwards the limestone was worked by means of the same pit shafts which were sunk down to it. "Mines of limestone" are expressly mentioned in local acts of parliament in the neighbourhood. Lord *Tenterden*, C. J. "We are of opinion that this property is rateable. I take it to be now established as law that the expression of coal mines in the 43 Eliz. has the effect of excluding all other mines, according to the maxim '*expressio unius*.'" And then after adverting to the dicta when this rule was established, and the inconvenience of departing from it, unless positively wrong, his lordship added, "the only remaining question will be whether the property in limestone which has been rated is properly a limestone mine; and this perhaps is rather a question of fact than of law. The description of the

Quarries.

manner in which this stone is obtained and raised, namely, by sinking shafts perpendicularly down to the stratum, which lies considerably below the surface of the ground, and then working the stratum by roads and gateheads, with the necessary provision for air and raising the stone to the surface by machinery or carrying it under ground to a tunnel, is the exact description of the present usual mode of mining; of the mode used in obtaining coal; and of the mode used in obtaining ironstone. Ironstone obtained in this manner has been held not to be rateable: why then should limestone be? what difference is there between the two? the only difference that has been suggested is, that ironstone contains a quantity of metal and is procured for the sake of the metal it contains. But, if the existence of metal be necessary to constitute a mine, salt-works, from which salt is obtained in the way that this stone was obtained, will not be mines; nor indeed will coal-works be mines, though in the statute itself they are so called. And to deny the character of a mine to the works in question would, as it appears to us, be to depart from the ordinary and proper meaning of that word in the English language." Order of sessions confirmed.

Salt works.

Whether a mine or quarry is a question of fact for the sessions only.

Rex v. Dunsford, 4 N. & M. 349; 1 Harr. & Woll. 93, S. C. The appellant was rated for a stone quarry; it was freestone, and brought out through a level; the stone was raised by cranes and rollers; no steam engine was used, nor are there any air tunnels. Lord Denman said, "The case of *Rex v. Sedgeley* is quite binding; but the question here is whether the sessions have taken it as a guide. It is a question of fact. The principle of law is that the mode of getting, and not the nature of the article, constitutes mine or no mine. But it seems to follow that the application of the principle to the facts must be made by the sessions. If they had said this was a mine, I should have considered myself bound by the finding. They have confirmed the rate and called the property a quarry, but have also stated the facts and put the question whether this excavation is exempt. They have studiously avoided any finding. The answer of the court is, we will not decide the question of fact. The sessions must decide whether applying the rule of *Rex v. Sedgeley* this excavation is a mine or not." Little-dale, J. concurred that this was a question for the sessions. "I do not see how a court, as a matter of law, can say whether the mode of operation is such as to constitute the excavation a mine; that depends on a variety of circumstances. I see no difference between this quarry (for it seems to me to be clearly a quarry, though doubtful whether it is a mine,) and a common open quarry, except that it is underground and approached by a level; and I do not know how we as a matter of law can say this is a mine." Williams, J. concurred. Case sent back to the sessions.

Lime works, in *Rex v. Alderbury*, 1 East, 534, slate works, in *Rex v. Woodland*, 2 East, 16, potters' clay pits, in *Rex v. Brown*, 8 East, 528, were held rateable, but no question was made whether these excavations were mines or not.

Clay pits worked as Mines not rateable.

Clay pits worked as mines are not rateable.

Rex v. Brettell, 3 Bar. & Adol. 424. Appellants were rated to the poor for clay pits, which were excavations underground, from whence glass house pot clay, and fire-brick clay were extracted. A perpendicular shaft was sunk from the surface of the land for the purpose of raising the clay out of the strata, which was done by a steam engine and other mining apparatus. The excavations were like those which are made for working coal and metallic mines, and the mode of raising the clay was the same as that used in a coal mine. Held that the pits so assessed were clay mines and therefore not rateable. Lord Tenterden, "I see no reason for departing from the opinion which I delivered in *Rex v. Sedgeley* (ante, 166). The only difference between that and the present case consists in the character of the commodity obtained; the mode of obtaining it is the same. Now that case establishes that in order to determine whether an excavation in the earth constitutes a mine or not, we are to look to the mode in which the

article is obtained, and not into chemical or geological character. Here, as in *Rex v. Sedgeley*, the substance is obtained by what in the ordinary and indeed in every sense of the word is mining. That being so, these clay pits are mines, and consequently are not rateable to the relief of the poor." *Lit- tledale, J.* "I think we are bound by *Rex v. Sedgeley*, and that the mode in which the substance is obtained decides the question." *Parke and Patte- son* concurred.

Clay Pits, &c.

UNDERWOODS SALEABLE.

The occupier of "saleable underwoods" is rateable. 43 Eliz. c. 2, s. 1.

*Underwoods
saleable
(ante, 103.)*

Rex v. Mirfield, 10 East, 219. The woods which were the subject of the rate were underwoods, which were usually cut down once in twenty-one years, and then, and not before, were profitable to the appellant. That these under- woods had not been cut for ten years, and were then standing to complete the twenty-one years' growth. And the question was, whether these woods were *saleable underwoods*, and liable to be rated every year according to the annual average, or only *when cut down and sold*? Lord *Ellenborough, C. J.* delivered the opinion of the court, after consideration, that *saleable* means such as are intended for sale, in contradistinction to such as are to supply the land with estovers for fuel, and other purposes of the estate; and are therefore rateable at all times according to their value, in exact proportion with the rest of the property in the parish. If they were rateable only in the year in which they are cut, they would contribute a very different sum from what they would do by contributing annually." His lordship here illustrated it by figures, and added, "As to the rating it annually, the objection to this is, that the property ought not to be rated until the produce of it has been severed from the land, and until it has supplied the occupier with the means of paying. But it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. Instances continually occur in which the occupier is rated, though he has derived no profit during the period for which the rate is made. A new tenant upon an arable farm reaps none of the produce till the autumn, and yet he must pay up to that autumn, according to the value of his estate. He must pay beforehand for the future probable produce. His farm is constantly in a progressive state towards producing profit, and he pays for that progress. So underwoods are annually improving in value, and the rates the occupier pays is for that profit. This may be hard upon tenants for life; but if the law has thrown this burthen on the property, they must take it with that burthen. We think the law has so thrown it, and the property is liable to be rated at all times when rates are made."

*Saleable under-
woods* are rateable
at all times, and
not only when
they are cut.

Rex v. Ferrybridge, 2 D. & Ryl. 634; 1 B. & C. 375. Appeal against a rate in respect of woods and plantations. The appellant is the occupier of 650 acres of land. In 1785 and 1786, 340 acres of it were planted with oak and ash closely intermixed with Scotch firs and larches. At different periods portions of the firs and larches were cut down for the purpose of thinning the plantations, and some of these thinnings were sold under the name of fir and larch poles, but the greater part were used in the erection of buildings. Con- siderable thinnings of the firs and larches have been made within the last four years, and produced a profit; many of them were of the height of from thirty to forty feet, and contain from ten to twelve cubic feet of wood, and were thirty years old. This wood is cut without reference to size, in order to allow room for the ash and oak to spread. The purpose of introducing firs and larches into those plantations being to keep the same thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oak and ash by reason of their growth require more space. Fifteen years ago, eighteen other acres, and five years ago, seventeen other acres of the said land were planted in a like manner. The eighteen acres have been thinned by cutting out a portion of the firs and larches, but no profit was derived by such thinning. The seven-

Firs and larch planted with oaks for the purpose of sheltering the lat- ter, and cut from time to time, as the oaks grow larger and requir- ed more space, but when once cut not growing again, and some of them yielding a profit by sale, are not *saleable under- woods*, the pri- mary object of planting them be- ing to protect the oaks, and not de- rive a profit from them *per se* by sale.

Sem- ble. That they are not un- derwood at all.

III.

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Underwood.

teen acres have not yet been thinned. The roots of the firs and larches which are cut die in the ground and produce no shoots. The whole of the land so planted hath been always rated to the relief of the poor. *Bayley, J.* "The stat. 43 Eliz. does not throw the charge of maintaining the poor on the occupiers of every species of property, but only on the occupiers of property of certain particular descriptions there specified, and amongst others it speaks of the occupiers of saleable underwoods. The legislature does not use the word "Underwoods" (*a*) *per se*, but "Saleable Underwoods:" and they have not in this or any former statute affixed any definite meaning to the term "Underwood." If they had done so, we should feel ourselves bound to adopt that as the meaning of the word in construing the present act. It has been said that all wood comes within the description either of timber or underwood, and therefore, that as firs and larches are not timber, they must be considered as underwood. It is not necessary to decide whether this be correct, because by the statute of Eliz. saleable underwoods only are subject to be rated to the relief of the poor. It may however be observed, that if all wood which is not timber be underwood, it would follow that horse-chesnuts, limes, plane-trees, and aspens would come within that description. Yet surely it would be a perversion of language to call such trees underwood. Generally speaking, that term is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits. It is probable that this is the description of coppice and underwood to which the statute of Eliz. applies. But it is not necessary to decide that, inasmuch as that statute also requires that it should be saleable underwood, and the word *saleable* in *Rex v. Mirfield* has been held to denote such as is intended or destined for sale, in contradistinction to such as is to supply the land with estovers for fuel and other purposes of the estate. It does not therefore come within the description of saleable underwood, unless the prospect of deriving a profit by sale was the main object of the proprietor when the plantation was made. There are some species of wood, such as hazel, which are valuable only as underwood, and which must have been planted originally for the purpose of acquiring profit by sale. But of all plantations fir is perhaps the least valuable, being chiefly, I believe, intended for protection rather than profit. It is found as a fact in this case, that these firs and larches were planted principally for the purpose of affording protection to the oak and ash. The latter were the most valuable. The firs too were cut only for the purpose of thinning the plantation. Some indeed were sold, but the greater part were used in the erection of buildings on the estate. Here the trees when cut were thirty feet high, which to be sure does not accord with one's notions of underwood. Nor could they have been planted with a view to a profit by sale, for if so the cuttings would have taken place with reference to their size; but here, the cuttings were made in fact merely for the purpose of thinning the plantations, and with reference to the main object, the encouragement of the growth of the more valuable trees. It is quite clear therefore that profit was not the sole or even principal object for which the firs and larches were originally planted; and if so, they are not saleable underwoods within the meaning of the 43 Eliz. It seems to me, that it would be most mischievous if property of this description was liable to be rated. It is an object of national policy to encourage the growth of timber. The grower of timber gives up a present profit with a view to future advantage, and it is fit that he should be encouraged to do so. If this be rateable property, then according to *Rex v. Mirfield* it must be rateable annually to the relief of the poor, though it should not happen to be cut more than once in twenty years. The grower therefore will be subject to an annual charge long before he can derive any profit. That would operate as a great discouragement to the growth of timber; and I cannot therefore think that the legislature meant to subject property of this description to

(a) See a learned argument on the legal acceptation of underwood, in a note to this case, 1 B. & C. 379.

such an annual charge. *The object of the statute was to subject to the rate all such property only as yielded a succession of profits.* I am therefore of opinion that whether this be underwood or not, at all events it is not saleable underwood, and therefore not rateable to the relief of the poor." *Holroyd, J.* "I am also of opinion that the firs and larches mentioned in this case are not saleable underwoods within the meaning of those words, as used in the 43 Eliz. The word "underwood" must be there taken to be used in its popular sense, unless it be shown to have been used differently by the legislature in that or other statutes. According to its popular meaning it signifies coppice, as distinguished from *haut bois*. Admitting however that these firs and larches were underwood, I am clearly of opinion that they are not saleable underwoods within the meaning of the statute of Eliz. The general subject of rate in that statute is property yielding renewable profits; for even coal mines when worked may be said in some sense to yield a succession of profits. Underwoods cut at stated periods do yield a succession of profits from time to time, though not annually. This is clearly not wood of that description, for when it is once cut, the root is destroyed, and there is no succession of profit. In order to ascertain whether these be saleable underwoods, the object for which they were planted and the mode of management ought to be taken into consideration. It appears that, upon one occasion, even though eighteen acres were cut, no profit whatever was thereby produced; and that is a strong circumstance to show that the cuttings were not made with a view to sale, but to encourage and preserve the oaks and ashes. I am therefore clearly of opinion that these firs and larches are not saleable underwoods within the meaning of the statute of Eliz." *Best, J.* "In the reign of Eliz., underwood was probably more generally used for fuel than at present; it yielded also a profit at certain intervals, though not annually. The legislature too have not merely used the term underwood, but have qualified it by the term *saleable*, thereby meaning that species of underwood which is generally produced for the purposes of sale, which is cut down at stated periods, produces new shoots, and thereby yields, at certain intervals, profits coming as nearly as possible to annual profits. It appears that the cuttings did actually yield some profit, but they are not necessarily rateable on that account. The property ought to be of that description for which the owner is likely to derive a profit. It has been argued, that as these firs would be titheable, they are therefore subject to be rated to the poor; but that by no means follows; for by the 45 Edw. III. c. 3, *gros bois* of the age of twenty years, in respect of which the clergy had claimed tithe under the name of *sylva cædua*, is expressly exempted from tithe. Now, *gros bois* means timber; and by the common law includes oak, ash, and elm; and by the custom of the country, in particular places, many other species of trees. Every species of wood which is not timber by the common law or by custom, is titheable. By the statute of Eliz. no species of wood but saleable underwood is liable to be rated to the relief of the poor. It has been said that *sylva cædua* and underwood are synonymous. In *Ford v. Rackster* (4 M. & S. 137), however, Lord *Ellenborough*, delivering the judgment of the court, says ' *Sylva cædua* and *subbois*, or underwood, are not it should seem from 45 Edw. III. synonymous; for *subbois* is stated to be comprehended in it, not to be it itself, or to be the same thing with it. *Sylva cædua* seems to comprehend, *vi termini*, besides underwood, all such wood as is occasionally cut, either in body, branch or root, with the statutable exception only of *grosbois*, properly so called, when it is of that age at which it is by the 45 Edw. III. exempt from being tithed, i. e. of twenty years or upwards.' Underwood therefore is one species of *sylva cædua*, and possibly the firs and larches may be *sylva cædua*, though not underwood. It is however unnecessary to decide in this case whether these firs be underwood or not. It is sufficient to say that they are not saleable underwoods, and therefore that they are not rateable to the relief of the poor." Order of sessions confirmed.

7. *Exemption from Rates.*

7. *Exemption from Rates.* (a)

Property, which may be the usual subject matter of a rate, is often exempted by express provision, and when the rates are so exempted, the land is so also; and when the value of land, &c. which had previously been rated, is enhanced in value by improvements carried on under acts of parliament, it is frequently provided that the rates shall be imposed according to its former and not according to its improved value. The following cases are examples of each of these classes.

Rex v. Calder and Hebble Navigation, 1 B. & Ald. 263. By 9 Geo. III. the proprietors were empowered to take certain duties "which should at all times thereafter be exempted from the payment of any taxes, rates, assessments, or impositions whatsoever." There was no express exception of the site as navigation, as land. The proprietors had built a house, which was occupied by their servant, and for which they agreed to pay a proportion of the rate, resisting only the rate upon the land covered with water and the towing path, from which the proprietors derived no emolument, but the rates, &c. It was held that the company were not rateable for the land; some doubt was entertained whether tolls were at that time held to be rateable *eo nomine*, it was not the intention to exempt them only; but as Abbott, J. observed, "It appears that the rates and duties form the only profit arising out of the land. These the legislature has expressly exempted from the payment of the poor rate, and the only profit of the land being exempted, it would be a strong thing to say that the land itself should still continue subject to the rate. At the time of passing this act tolls *eo nomine* were considered rateable, but I can find no instance in which the tolls having been rated, the land has also been rated in respect of any other profit;" and after alluding to the oldest case on tolls, *Rex v. Wickham Market*, 3 Keble, 540, and *Rex v. Cardington*, Cowp. 581, he added, "if, as it appears from these cases, by the word 'tolls' may be meant the thing in respect of which the tolls are received, the exemption of tolls by the legislature is an exemption of that in respect of which they are receivable."

Rex v. St. Peter, Worcester, 5 B. & C. 473; 8 D. & R. 331. By 31 Geo. III. c. 31, s. 77, it was enacted, that the company should be rated to all parochial taxes in respect of their lands, &c. in the same proportion as other lands lying near the same should be rated, and as the same lands would be rateable in case the same were the property of individuals in their natural capacity. By 38 Geo. III. c. 31, s. 20, it was enacted, that the company should be rated to all parochial taxes in respect of the lands used by them for the purpose of the said navigation, in the same proportion as other lands and buildings adjoining or lying near the canal should be rated; but it was further enacted, that it should be lawful for the company to agree with any owner of lands adjoining their lands, taken for the purpose of the said navigation, for an exemption from all rates and taxes in respect of such lands, and for charging the same upon the adjoining lands of such persons; and in all such cases the parochial taxes, rates, &c. which might be thereafter charged upon or payable in respect of the lands so taken for the purposes of the said navigation, should be rated and charged upon such adjoining lands, and upon the owners and occupiers thereof, and the lands of the company should be exempted and discharged therefrom. Bayley, J. "This case is perfectly clear. It is in effect decided by the *Grand Junction Canal Company's case*, and *Rex v. St. Mary's, Leicester*. (T. T. 57 Geo. III.) These cases establish this principle, that unless there is some clause of exemption in the act of parliament, land taken for the purpose of a canal will be rateable, not according to the value of the land when it was taken for a canal, but according to the value which it has acquired from being used for a canal. But canals are supposed to be of public benefit, and therefore some canal acts have clauses of exemption, so as to leave land upon the same footing in this respect, as it was when taken for a canal. It has been argued, that the true construction of the clause of exemption is that the rates are to be equally

(a) See the arrangement of subject, *ante*, 101.

laid upon all the property assessed, and that it is only confirmatory of the common law in that respect; but in construing statutes, we are bound to give statutable effect to the words used, and so construing them, I think that the effect of the clause is to exempt the company from being rated for the increased value of the land by the canal."

Rex v. Grand Junction Canal Company, 1 B. & A. 289. A canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish in proportion to the length of the canal in such parish. The Court of K. B. held that the company were liable to be rated for their lands, &c. only at the same value as other adjacent lands, and not according to the improved value derived from the land being used for the purposes of the canal. *Bayley, J.* "It has been urged, that the legislature only meant to regulate the proportion in which the canal was to be rated to the other lands adjacent, as, for instance, if those lands were charged with three-fourths of the rack rent, then the canal also was to be three-fourths of the value, and so on in any other case. Now it would have been quite useless to introduce any provision to that effect, for in all cases that mode must be adopted." *Abbott, J.* observed, "that the rate was bad in point of form, as the statute directs it to be made on the rates and personal estate of the company, and the present rate was on the canal."

7. *Exemption from Rates.*

Lands and buildings of canal company, when not rateable by improved value.

8. *Rating under Local Acts. (a)*

Besides the general provision in the statute of Elizabeth, local statutes are frequently passed, either *enlarging* or *limiting* the general statutes, and where the local act uses different language from the 43 of Eliz., the local act is not to be construed as if the language was the same. "The 43 Eliz. uses language applicable generally to the kingdom at large. The 9 & 10 Will. III. (local act) having in its view the town of Hull only, would naturally suit its expressions to the state and circumstances of that place: and where we find a deviation from the language in the stat. of Eliz. the presumption is, that the deviation was intended, and that a different system was thought better for Hull, and that the language therefore proper for such system was used." *C. J. Abbott. Rex v. Hull Dock Company*, 3 B. & C. 516; 5 D. & R. 359. One ground of appeal in the above case was, that persons non-resident in Hull, but having shops and stock in trade, were not rated. Also, that the overseer had omitted owners and part-owners of ships, which were registered at Hull, and usually traded to and from that port, and were within the port at the time when the rate was made. The 9 & 10 Will. III. (local act) enacted, that the rates should be raised by taxation of every inhabitant, and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates within the town. Upon this, *C. J. Abbott*, in giving judgment, said, "It was most properly admitted in argument that '*stocks and estates*' must include all stock in trade and personal property. '*Stocks*' could have no other meaning, and '*estates*,' placed as it is in the clause, must extend to personal estates. This statute, therefore, has these two effective words, which are not to be found in the stat. of Eliz., and these two words remove from this case all distinction between residents and non-residents; under the stat. of Eliz. there is no word applicable to personal property: and it was only on the ground of his being an *inhabitant* that any owner of personal property could be rated for it, because there is no word to include him except the word *inhabitant*. Under that statute, therefore, there was necessarily a distinction between residents and non-residents, because the resident for his personalty within the place, the non-resident not. The distinction, however, under that statute applied only to those kinds of property which the statute did not specify: for the occupier of lands, houses, &c. and whatever the

8. *Rating under Local Acts.*

Non-resident owners of stock in trade and ships are rateable in Hull.

(a) See the arrangement of subject, *ante*, 101.

8. *Rating
under Local
Acts.*

Waterworks not
a tenement within
the meaning of
a local act.

statute enumerated, was rateable, whether he were resident or not. In this statute, 9 & 10 Will. III., what was defective in this respect in the stat. of Eliz. is supplied: the rate is to be not only upon every inhabitant, but upon all stocks and estates. Lands, houses, and tithes, are all rateable according to the general principles of rating, whether the occupier be resident or not; and it is impossible upon this act to say that lands within the town shall be rated, but that stocks and personalty shall not. The stocks and personalty are not rateable elsewhere, they have all the benefit of the town, and there can be no reason, therefore, when there are words sufficient to include them, they should not be included. We are therefore of opinion that the stock in trade, and ships yielding profit, are liable to be rated."

Rex v. Manchester Waterworks, 3 D. & R. 20; 1 B. & C. 630. The facts of the case will be found in the judgment of the court delivered by Bayley, J. "The question in this case was, whether the company of proprietors of the Manchester and Salford Waterworks, in respect of their trunks, pipes, and other apparatus for supplying the towns of Manchester and Salford with water, were occupiers of what, within the meaning of the stat. 32 Geo. III. c. 69, is a tenement. By that act, the commissioners thereby appointed are authorized to ascertain the sum to be raised by rate or assessment on the several inhabitants of the town of Manchester and Salford, and to raise such sums from time to time, by rate or assessment, upon all the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coach-houses, brewhouses, and other buildings, *gardens or garden ground*, and other tenements in the towns of Manchester and Salford. The statute does not adopt the language of the 43 Elizabeth, 'lands and houses,' but enumerates the different properties which I have specified. It does not use the word 'land,' which is used in the statute of Elizabeth, but it uses the word 'tenements,' which the statute does not use. The decisions, therefore, upon the statute of Elizabeth will not govern this case, unless the word *tenements* here is used in as comprehensive a sense as the word *lands* there. This is an act for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places within the towns of Manchester and Salford; and a chief object appears by the recital to be, to provide for the peace, security, and accommodation of the inhabitants of the towns and of persons resorting to and passing through them. The occupier of any messuage, dwelling-house, warehouse, or other building, or of *any other tenement* within either of the towns, of the yearly value of 30*l.* is a commissioner. The word 'tenement' occurs in this part of the act, and is altogether associated with words which denote buildings. Section 39, which gives the power of rating, directs the commissioners to ascertain every year the sums to be raised by rates on the inhabitants of Manchester, and by rates on the inhabitants of Salford, as if *inhabitants* were to be the persons rated; and in addition to such words as denote buildings, and the general words *tenements*, introduces the words 'gardens and garden grounds, and other tenements.' By sect. 40 the demand of the rate is to be left at the dwelling-house or *tenement* occupied. And by section 43, it is recited, that several messuages or dwelling-houses, warehouses, or other buildings or *tenements* in these towns, are let out in lodgings or *tenements* to divers tenants, and that it would be difficult to rate the occupiers, or recover their rates, and provision is made for rating the landlord of every such messuage, &c. of the yearly value of 4*l.* 10*s.* or upwards, which shall be so let. These are some of the instances in which the word *tenement* is used in this act; and from these instances and the object of the act, it may be collected in what sense it uses that word. The omission to use the obvious and general word 'lands,' and yet introducing 'gardens and garden-grounds,' implies, that 'lands' in general were not intended to be rated. The object of the act was, to give security and accommodation to the residents and to their property. The inhabited houses, therefore, and every thing connected with residence or trade, as they were to have the advantage, were to be liable to the charge. The houses, warehouses, shops, and all other buildings, were to be rated, because they all had protection. But why were gardens and garden grounds to be included, if lands in general were not? Possibly, because the

produce thereof was of value, and was a probable object of depredation, and the general lighting and watching of the towns would give so much additional protection to this species of property, as might properly make it the subject of charge. Gardens, therefore, and garden grounds, may, on this account, be distinguished from other descriptions of land, and may be subjected to this charge, whilst land in general is exempt. Pasture ground, for instance, stone quarries, and other kinds of real property, though included in the 43 Elizabeth, as affording income, and supplying, therefore, the means of contribution, are omitted in this act, because such property derives no equivalent or material protection from it. Upon the ground, therefore, that this statute does not use the comprehensive word *land*, and uses the word *tenement* in a very limited sense only, and not in a sense to include the property in question, we are of opinion that this property was not liable to be rated, that it ought to be expunged from the rate." Order of sessions quashed.

Rex v. Mosley, 3 D. & R. 385; 2 B. & C. 226. The lord of the manor was rated under the same act for market sites and profits. The market was held in the open street, and it was contended that this was a tenement. But the court said, "The meaning of the word *tenement*, as used in this act, had been under their consideration on a former occasion; and that they were satisfied that it was intended to be applied to those things only which were *ejusdem generis*, with those particularly enumerated, and was not intended to be used in the larger sense sometimes given to it; that the subject of the present rate, not being of the same nature as any of the descriptions of property specified in the act, was not liable to be rated." Order of sessions quashed.

Nor lord of a
market in public
street.

Rex v. Trustees of the Streets of Shrewsbury, 3 B. & Ad. 216. This was an appeal against a paving rate, assessed on appellants as occupiers of gas pipes. Case:—The company was established, and empowered to break the soil and lay pipes, &c. by 1 Geo. IV. c. lvi. By the paving act of 1 & 2 Geo. IV. it was enacted, "that the charges and expenses of lighting, paving, cleansing, watering, watching, widening, altering, improving, and regulating the said streets, squares, highways, lanes, and other public passages of the town of Shrewsbury, and otherwise putting this act into execution, shall at all times be borne and defrayed by the tenants or occupiers of all the houses, shops, malt-houses, granaries, warehouses, coach-houses, yards, gardens, garden ground, stables, cellars, vaults, wharfs, and other buildings and hereditaments, not only within the outer gates and walls of the said town of Shrewsbury, but also within any part of the said town which the river Severn encompasses, meadow and pasture ground excepted." And the trustees under the act were empowered to make rates upon the tenants and occupiers of all such messuages, houses, shops, malthouses, &c. (as before, with the same exception,) for the purpose of defraying those expenses. In pursuance of the power so given, the company were rated as above mentioned. They have no property within the outer gates and walls, or within any part of the town encompassed by the Severn, except the pipes and apparatus specified in the assessment. *Cur. adv. vult.* Lord Tenterden, C. J. "It was admitted that if this had been a poor rate under the statute of Elizabeth, there could have been no doubt that the Gas Light Company would be liable; nor can there be any doubt that the word 'hereditament,' in its large and extensive and ordinary sense, will include the ground and soil in the several ways, lanes, and other places in which the pipes and apparatus belonging to this company are fixed. But it was contended, that the term as here used, was to be construed with reference to the words among which it was found, and must be applied to hereditaments of the same kind as those particularly enumerated, such as coachhouses, gardens, and so on; and reliance was placed on a case decided not long ago, *Rex v. The Proprietors of the Manchester and Salford Waterworks* (ante, 174), where the word used was 'tenement,' which is also a term of very large import. In that case it was held by the court that the word should be restrained in construction to tenements of the same kind as the particular ones before enumerated; but there is in this act a circumstance which was not found in the other, the exception, namely, that the act shall not extend to meadows and pastures. Now it is

Gas pipes are
"hereditaments"
within a local act.

8. *Rating under Local Acts.*

certain that meadows and pastures would have fallen within the meaning of the word 'hereditament,' if they had not been excepted; it was argued, therefore, that this special exemption of meadows and pastures showed that the other word had been previously used in its larger sense. On the other hand it was contended, that these words had been introduced merely *ex majori cautela*. Upon the best consideration we have been able to give this case, we are of opinion that we ought not to consider the exception of meadow and pasture ground as made only for greater caution, but are bound to look upon it as introduced by way of special exception, and so to construe the clause: and, consequently, every thing not so specifically excepted must be understood to fall within the general liability. We therefore think that the court of quarter sessions were wrong in striking out the company's name from the rate, and that the rate on them ought to have been allowed." Order of sessions quashed. See also *Brown v. Lord Granville*, 10 Bing. 70, the import of the word building in a local act for paving.

Land adjoining the canal, which has not been converted into a wharf, cannot be rated as such, although timber is permitted to be landed there.(a)

Rex v. Regent's Canal, 9 D. & R. 760; 6 B. & C. 720. By the act under which the company was established, it was provided that lands, whether covered with water or not, and dwellings, wharfs, &c. belonging to the company, should be rateable to the poor, the lands according to their quality, and the dwelling houses, wharfs, &c. according to the nature and respective uses thereof, in like manner as lands, houses, wharfs, &c. of a similar kind in the several parishes where they were respectively situated. The company had, on the margin of a large basin, a piece of land adjoining the private yard of a timber merchant. This piece of land next the basin consisted of natural ground; it was not faced with brick or timber, and the ground below the water gradually sloped down to the bottom of the basin. The timber merchant landed his timber upon this piece of land, and it was there marked and measured by the revenue officers. No acknowledgment or rent was paid to the company for this privilege of landing the goods there, but their rates and duties were increased, a greater number of ships entering the basin in consequence of this privilege: held, that this piece of land was not a wharf within the meaning of the act of parliament, and was not liable to be rated as such to the relief of the poor.

Rex v. Maddermarket (ante, 118). By a local act inhabitants were rateable for money out at interest: but it was held that money vested in the stocks is not within the statute.

Local act of London Dock Company.

Rex v. St. George, Middlesex, 9 East, 127. By the construction of the local act 39 & 40 Geo. III. c. 47, the London Dock Company are liable, even during the first twelve years of their establishment, to be rated for the fair annual value of their warehouses and other works which are finished and productive, though all the works directed by the act be not completed. But such completed works must, under such circumstances, be rated for their value at the rate of 8½d. in the pound, such being the rate calculated upon by the legislature to raise 139l. 8s. 7d. per quarter upon 3966l., the average rental for ten years preceding the act of parliament, on the premises destroyed by the company in making their works: and which quarterly sum the company were, at all events, bound to pay to the parish during the twelve years, or until the works were completed, whether those works were productive or not. But when productive beyond that sum, the surplus is to be taken in the first instance by the company, in order to reimburse themselves what they may have advanced to the parish to make good the deficiencies, before any such productive surplus existed, until the company shall be reimbursed; therefore, until these purposes are effected, a rate made on the increased real value of the dock premises at more than 8½d. in the pound, or a rate of 8½d. in the pound on the old average value of the premises before the erection of the company's works, and below the increased value of the new works, is in either case bad.

(a) Another question discussed at great length in this case was, whether the land was rateable at its improved value.

9. Amount of Rate or Principle of Valuation.

The Court of King's Bench has at all times manifested an indisposition to interfere with the relative proportions in which rates are made upon different persons, or different kinds of property, that being the more immediate province of the magistrates in sessions. The following rules, however, may be deduced from the decisions on this subject:—1st, That the rate must be regulated by the *improved value* of the property; 2nd, That although the *rent* reserved cannot be always relied on, yet the annual sum at which the property *would let for* is the fair criterion of its value; 3dly, That one species of property may be fairly assessed in a *different* proportion of its rent, from the proportion in which another is assessed in the same rate; and, 4thly, That the court will *presume a rate is equal*, unless it appear to the contrary.

Re v. T. Mast, 6 T. R. 154. *T. Mast* appealed against a poor rate for the parish of St. Neot's, in which he was rated at the real annual value of his estate; *W. Fowler* was rated at 29*l.* per annum, but the real annual value in consequence of improvements made by him was 175*l.*; he occupied, besides, other lands and property in the parish, for which he was rated after the same manner. *Gorham* was rated in the same way. Lord *Kenyon*, C. J. "The assessment for the relief of the poor should be so contrived that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. Every inhabitant ought to be rated according to the *present value* of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it. If a person chose to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that: (a) but if he prefer using it in the amelioration of an estate or other property, he is rateable for the same in another shape. In whatever way the owner makes his estate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved estate; and whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons; there cannot be one medium of rating for one class of persons, and another for another class. Now here it appears that the appellant was rated at the full annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates. With regard to the discretion of the justices, if indeed they had confirmed this rate generally, without disclosing to us the grounds on which they proceeded, we could not have quashed the rate, because the inequality does not appear upon the face of it; but they have disclosed those grounds; and, on the case as stated, it is impossible not to say that they have made a mistake. This rate appears so defective throughout, that it cannot be amended." *Ashhurst* and *Grose*, Js. of the same opinion.

A person must be rated according to the *improved* value of his property.

Re v. Miller, Cowp. 619. Lands with buildings thereon, and a well of mineral water thereout arising, called the Cheltenham Spa, were demised to *W. M.* at a yearly rent of 100*l.* The lands and buildings, independent of the well, were of the annual value of 20*l.* Rent paid for the mineral water 80*l.* And he was rated to the poor at 100*l.* a year. By Lord *Mansfield*, C. J. "Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land, let to the defendant at 100*l.* a year; and the value arises partly from the buildings, and partly from the spring that produces the mineral water. Therefore, the profits of the spring are part of the produce of the land. In Worcestershire and Cheshire, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land, and therefore, as such, ought to be rated.

The profits of a mineral spring are part of the produce of the land, and therefore the occupier is rateable upon the value of the whole.

(a) This is an erroneous supposition, *ante*, 117.

9. *Principle of Valuation, &c.*

Land, the annual value of which is improved by a spring of water, is liable to be rated at the aggregate annual value of the land and spring together.

Rex v. The Governor and Company of the New River, 1 M. & Sel. 503. In a rate for Little Amwell, the New River Company were rated for land in Chadwell Mead. They were incorporated June 21, 1619, for conveying water from a spring in Chadwell Mead, in Little Amwell, to London and Westminster; and they supply a great part of the same with water, by a cut called the New River, leading from the spring to a reservoir at Islington, whence it is distributed by pipes over the metropolis, and from which the company receive considerable profit beyond the sum at which it is rated. The water of the New River is derived part from the river Lea, and part from a spring inclosed in a basin in Chadwell Mead, which is the subject of the present rate, and is the freehold of the New River Company, and in their occupation. The quantity of water derived from each of these sources is nearly equal. That part of Chadwell Mead which is occupied by the company, and is the subject of the rate, contains about two acres: it consists solely of the basin in which the spring rises, and so much of the cut from thence called the New River as lies in Little Amwell, where it joins the water taken from the river Lea, and from thence it continues to run with the said water so taken from the river Lea in one joint course to Islington. The land alone, without the spring, and not covered with water, is of the annual value of 5*l*. The whole profits of the company arise from the sale of the water, no part of which is distributed, nor is any money received for it, nor is any due in Little Amwell. If the advantage which the company derive from the use of the spring, may by law be included in the rate upon the land, the land and spring of water together are of the annual value at which they are rated. Lord *Ellenborough*, C. J. "This is a rate imposed on land, including a spring of water, as being of the aggregate annual value of 300*l*. The case finds 'that the land alone, without the spring, and if not covered with water, is of the annual value of 5*l*.; but if the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and spring together are of the annual value at which they are rated.' Much of the argument against this rate seems to be built on a perversion of the terms of this finding. I am at a loss to discover between this case and *Rex v. Miller* (*ante*, 177), any other distinction than that which has been alluded to, viz. that the quality of the two waters is different, the one being a mineral, and the other plain water. It has been assumed, indeed, that in that case all the profits were received in the parish where the land lay: but the case does not warrant any such conclusion; and we know perfectly well that the mineral water in question, in that case, is disposed of in great quantities at distant places. It may be said also, that in this case the owners of the property are also the occupiers, but there the property was in the occupation of a tenant; to which the answer has already been given, viz. that the circumstance is no otherwise material than as it affords a more easy criterion for ascertaining the annual value. Here, then, is land and water inclosed in a basin upon the land, which falls within the legal description of land; and although a considerable portion of the profits of such water is derived from pipes, through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain-head: and in cases of this kind it is enough to ascertain the local value of the property, without inquiring whether it yields a return on the spot. A degree of confusion has arisen from comparing this to the case of tolls upon canals, whereas they are essentially different; for tolls are an incorporeal hereditament, and have no local corporeal existence, so as to be the subject of rate until they become due. Then we have been pressed with the case of *Rex v. Sculcoates*, where it was holden that the commissioners in whom a drainage was vested were not rateable; but that was so holden upon the principle that where there is not a scintilla of benefit derived from the occupation, the property is not rateable: there the commissioners were merely servants of the public, having no divisible fund in their hands either as trustees or to their own benefit, and deriving no advantage from the drainage; and the only persons benefited by it were the owners of lands in other parishes. In *Rex v. Bath* it was assumed in the decision that the water

Tolls upon canals.

was the subject of rate in the parish where it was impounded in the reservoirs; the only question there being, whether the corporation were rateable in that parish to the extent of all the profits received by them, or whether the rate ought not to have been framed with reference to the contributory profits derived to the company in other parishes. Without going farther into the several cases upon this subject, and feeling no disposition to overrule the case of *Rex v. Miller*, I think there is no doubt that the sessions have come to a right decision. The property is locally valuable in the parish where it is rated, although that value is derived from extrinsic circumstances, and although the profits are actually received elsewhere." *Grose, J.* "I cannot distinguish this case from the common case of land on which corn grows. In such case the land is assessed according to its value, and that value is estimated according to that which it produces: so here the land produces a spring, and the value of it is to be computed according to the benefit which the spring produces to the company." *Le Blanc, J.* "The question is, whether in estimating the value of land, something which is peculiar to the land, and makes it more profitable to the occupier than if it were away, can be taken into consideration: and that question has already been determined in *Rex v. Miller*, which, as it seems to me, cannot be distinguished from the present case. Does it make any difference to the occupier whether he takes the profits of his land by selling the produce on the land itself, or by disposing of it elsewhere? Suppose a man occupying land out of which he digs brick-earth, and converts it into bricks in an adjacent parish, would he not be liable to be rated as for brick land, in the parish where the land lies, in the same manner as if he had sold the bricks in that parish?" *Bayley, J.* "I think it is clear that the company are liable to be rated for the spring, which is part of the produce of the land. The company have the means of carrying this produce to market, where it affords a beneficial return; and it can make no difference whether they convey it along a canal, or in carts and waggons, or by any other mode. Perhaps it may be fair that in fixing the quantum of rate on this property, respect should be had to the benefit which results to the company in the different parishes through which the water is conveyed. But this observation applies only to the quantum, with which we have nothing to do." Order of sessions confirmed.

Rex v. St. Nicholas, Gloucester, Cald. 262; 1 *Bott*, 163. The mayor and burgesses were possessed of a house in St. Nicholas, in Gloucester, and erected a machine in a street by the said house for weighing waggons, carts, &c., for which they received 2d. per ton for what was weighed there, but persons were not compellable to weigh their carriages, &c. The steelyard, part of the said machine, was in the said house, which was called the engine-house: the house, exclusive of the profits of the machine, was worth 5l., and the profits worth about 40l. a year: the mayor and burgesses were rated "for the machine-house, 24l.: 1l. 16s." Per Lord Mansfield, C. J. "The nature of the thing shows that the machine is annexed to the freehold; they are one entire thing, and are together rated by the common known name (the machine-house,) which comprehends both. The steelyard is the most valuable part of the house: the house therefore applied to this use may be said to be built for the steelyard, and not the steelyard for the house: the clear profits are undoubtedly rateable, but a liberal allowance ought to be made for wear and tear, labour and attendance." *Willes, J.* said, "If the machine be appurtenant to the building, its clear profits are undoubtedly rateable. If a billiard table stand in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let at the advanced rate." Rate affirmed.

In *Rex v. Hogg, Cald.* 266; 1 *T. R.* 721. A house wherein there was a carding machine for manufacturing cotton, being let together with the machine as one entire subject, (the building being worth only two guineas a year by itself, but together with the machine rated at 36l.,) was properly rated as one subject. The engine was not fixed to the premises, but capable of being removed at pleasure. *Ashhurst, J.* considered the house and engine as one entire subject, and therefore rateable as such. *Buller, J.* considered them

9. Principle of Valuation, &c.

The profits of a house containing the steelyard of a weighing machine, are rateable, as arising from the house itself, the machine being annexed to the freehold.

Billiard table.

The profits of a house having a carding machine are rateable.

9. *Principle of Valuation, &c.* rateable both on that ground, and also because the engine was permanent property, visible, and yielding profit. *Grose, J.* agreed upon the same grounds.

The Hull Dock Company were held rateable in respect of the tonnage duties received by virtue of statute 14 Geo. III. c. 56, although it appeared that the expenditure in repairs during the period for which the rate was made exceeded the amount of the duties received.

Rex v. The Hull Dock Company, 5 M. & Sel. 394. The dock company at Kingston-upon-Hull were rated for dock and wharf, 2240*l.* in the parish of Sculcoates. By 14 Geo. III. c. 56, for making public quays or wharfs at Kingston-upon-Hull, for the better securing his majesty's revenues of customs, and for the benefit of commerce in the port, for making a dock with works, for the accommodation of vessels using the said port, the dock company were required to make a dock, and also a quay or wharf and other works, and to repair and cleanse them. Duties on ships lading or unlading in the port, and wharfage rates on goods landed on the quay, were granted to the company. Besides the emoluments arising from the dock dues, the company derive considerable emoluments from the rent of warehouses which they have erected, agreeably to the directions of the act. The warehouses are in the town of Hull, and not in the parish of Sculcoates. Two-third parts of the dock are situate within the parishes of the Holy Trinity and St. Mary, in Hull, and the remaining third is in the parish of Sculcoates. In 1814, the dock company rebuilt the lock and entrance basin, under the advice of their engineer. On the 2d of May, 1814, the ships were removed out of the dock, and the execution of the works commenced, and continued until the 31st December last. The expenditure of the company in respect of these works, from the 20th of September, (being the day when the rate was made to commence,) to the 31st of December following, amounted to 5483*l.* 15*s.* 2*d.*, and the receipts of the company, in respect of the duties and wharfage rates during the same period, amounted only to 2963*l.* 18*s.* 7*d.* The further estimated expenditure of the company in respect of the works, from the 31st of December to the 20th of March, (when the six months for which the rate was made would expire,) would be 1193*l.* 7*s.* 4*d.*, and the receipts of the company, in respect of the duties and wharfage-rates, would be 97*l.* only. The chief part of the expense was incurred in respect of the lock and entrance basin, which are situate in the town of Hull, but are essentially necessary to that part of the dock which is situate in Sculcoates. The parishioners of Sculcoates have, in assessing the dock company to previous poor rates, annually made a deduction of the company's expenditure in respect of the ordinary repairs of the dock, from the gross annual amount of the company's duties and wharfage rates. The sums stated in the account of expenses were all necessarily expended in making the repairs in question, and provided the dock company is entitled to deduct the same from their gross receipts, there are not any net proceeds whatever for the use of the company. The company did not, in consequence of the rebuilding of the lock and entrance basin, become entitled to any greater or other duties or wharfage rates than they were before entitled to. The question for the opinion of the court was, whether the company were liable to be rated for the six months for which the rate was made. Per Lord *Ellenborough*, C. J. "The act of parliament does not require the company to make a dividend at all events, nor does it say that they shall divide to the extreme limit of the monies received. Suppose an application to be made to this court for a *mandamus*, to compel the company to make a dividend of the whole balance in their hands, if the company were able to show that the expense of the necessary repairs of the basin for the ensuing year would be likely to absorb the whole or the greater part of this balance, would the court grant such a *mandamus*? And if the company were in any year to do so improvident an act, as to make a dividend to the uttermost penny, not reserving any thing for prospective demands; as there is a provision in the act, (s. 37,) enabling them to make calls from the proprietors for the necessary purposes of the act, the consequence would be, that instead of reserving out of the funds in hand, sufficient means to cover these expenses, they must call upon the proprietors to refund what they had improvidently distributed among them. The language of the act is, 'that the company shall have power to make such calls of money from the proprietors of shares, to defray the expenses of, or carry on the works authorized

by the act, as they from time to time shall find wanting and necessary for those purposes.' So that the company may call upon the proprietors of shares to refund what they have received. There is no question as to the rateability of this property; it has very properly been admitted that it is rateable. The question therefore is, whether a rate can be imposed in respect of property which is generally rateable, but the profits of which, owing to certain incidental and necessary expenses, have been for a time exhausted. As to which it is to be observed, that a rate is not always imposed on property in the particular year in which it makes a productive return, for if that were so, there could be no rate in respect of saleable underwoods and the like property, which are productive only after a series of years, except in those years in which the profits arose. But in *Rex v. Mirfield*, (10 East, 219, ante, 169,) it was decided, after much consideration, that saleable underwoods were rateable annually, in proportion to their value, though they should happen not to be cut down more than once in twenty-one years. In the present case, the company have no money in hand, but they have a property which upon an average is productive. To hold that in every case where property is rateable, an account is to be taken for the particular period for which the rate is imposed, of the precise amount of its productiveness, and that if there is the smallest decrease, the rate is to be reduced *pro tanto*, would, in my judgment, be infinitely inconvenient. Every house must then have its separate assessment, in order to let in the particular deductions belonging to each; and this mode of assessment would be open to every species of fraud, because the largest deductions would be attempted to be thrown on periods of the greatest pressure. It appears to me that this rate is well imposed, and that the average profits of the company are not liable to be merged in the partial expenditure of any particular period. I think therefore that this order ought to be confirmed." Bayley, J. "The case does not state that this property, *communibus annis*, is not productive of profit, but only that during this particular period it was not profitable. It appears that the company are in possession of property which is *prima facie*, rateable; the rate therefore is well imposed, unless the property is to be exempted on the ground of its not being profitable at the particular period for which the assessment is made. As to which *Rex v. Mirfield* is a clear authority, that the principle which is to govern is, whether it be profitable *communibus annis*." Abbott, J. "I think the company cannot relieve themselves from this rate, by showing that on occasion of some extraordinary expenditure during the particular period for which the rate is made, that which would have gone to the account of profits has been otherwise consumed. To hold any such rule, would in my opinion be productive of great inconvenience; for by the same rule I know not what answer could be given to the farmholder or householder, if they were to claim a similar exemption, because of the extraordinary expense which they had incurred in the maintenance or improvement of their house or land." Holroyd, J. "I am of the same opinion. The only doubt which I have entertained has been on s. 22, which obliges the company to repair the dock and other works; and if under that section the specific rates had been, so far as they were required, appropriated to that purpose only, I should have entertained considerable doubt whether any property vested in the trustees could properly be made the subject of rate, beyond the surplus which might happen to remain in their hands, after satisfying the expenses attending the maintenance and repair of the works. But the case is not so, for I find by s. 42 the duties payable by virtue of the act are vested in the company as their own proper monies, and for their use, in consideration of the expenses incurred by them in making and maintaining the works; and by s. 53 they are to take an account annually, and declare what dividend shall be made; so that they stand in the same situation with any other canal company."

Rex v. Tomlinson, 4 Man. & R. 169; 9 B. & C. 163. Upon a recent valuation of the rateable property in the parish of Stoke-upon-Trent, the occupiers of farms, lands, tithes, and market tolls were assessed respectively upon two-thirds of their estimated net yearly rent, payable to the landlord and the occu-

9. Principle of Valuation, &c.

Property is rateable if a profit is made *communibus annis*.

A poor rate made upon two-thirds of the net rent of lands, and one-half the net rents

9. *Principle of Valuation, &c.*

of collieries, is not manifestly unequal, and may be a fair and equal mode of rateing.

Annual value part only of rent.

Net rent.

The court will not presume a rate unequal, although houses and lands are not rated alike.

piers of houses, potworks, and every other description of building; and the occupiers of collieries and coal mines were assessed upon only one-half of their estimated net yearly rent, payable to the landlord. The lessees of certain water-works were assessed in respect of their water-works and water-pipes upon only one-half of their estimated yearly rental value; but the rate was amended as to them, by assessing them upon two-thirds of such rental value, being in the same proportion as land. The question for the court was, whether, as the occupiers of farms, &c. are assessed upon two-thirds of the rent, the occupiers of collieries and coal mines ought not to be rated in the like proportion upon two-thirds of their rent. *Bayley, J.* "The question was whether a rate was upon an unequal and consequently an unjust principle. It estimated the value of all property according to the net yearly rent; but it fixed the rate according to two-thirds of the rent in the case of lands, &c., whilst it fixed it according to one-half only in the case of houses and collieries: and whether this made the rate necessarily unequal was the question. It was not disputed but that the sessions were in general the proper judges of value; but it was insisted that if they fixed the proportions by a wrong rule, this court might and ought to interfere. And if the proportions have been fixed by a rule which we can pronounce to be wrong, we are of opinion our interference is requisite. Can we then pronounce the rule acted upon in this case to be wrong? It was almost admitted that there might properly be a distinction in the proportions between houses and land, though it was urged there could not be one between land and collieries; but when the consequences of this admission were seen, the admission was withdrawn. We are however of opinion that there may properly be a difference in the proportion of the annual rent upon which houses and lands are to be rated, it belonging to the sessions to fix the precise proportion. We also think that houses and collieries may be classed together. The rate is to be made on the occupier according to the annual profit or value which the subject of occupation produces; and it makes no difference in the amount of the rate whether the occupier be tenant or owner. In the case of houses, the annual profit or value is always a part only of the annual rent paid to the landlord. Some portion of that rent ought to be set apart to form a fund for repairing or rebuilding, when necessary; in other words, to maintain or reproduce the subject of occupation, a much less part, if any, of the annual rent of land is wanted for either of those purposes, and the whole in some cases, or nearly the whole in others, is annual profit or value. This difference is mentioned by Lord *Mansfield* in *Rex v. Brograve* (*infra*). In the case of collieries also, a part of the annual rent must be appropriated to repair and replace the works and engines, and in that respect they are in the same situation with houses. The sessions were therefore warranted in making a difference in the proportion of rating, with reference to annual rent, between houses and collieries on the one hand, and land on the other; and it is impossible for us to say that the proportion which they have fixed is not the right one. It was urged in the argument that the sessions have fixed the rate according to unequal proportions of the net rent, and it was contended that by the words 'net rent,' was meant the clear annual rent, after every deduction, including therefore the part to be set aside for repairs and reproduction of the subject of the rate, and consequently that the rate was unequal. But we cannot attribute any such meaning to these terms for the purpose of invalidating the rate. We think they mean only *that part of the rent which goes into the pocket of the landlord, and which is the rent paid by the tenant, after deducting taxes and charges of collection*; and this construction will support the rate. If the rate has been according to different proportions of the clear annual profit or value of the subject of occupation, it would have been otherwise; but annual rent is not annual profit or value. We are therefore of opinion that the order of sessions should be confirmed." Order of sessions confirmed.

In *Rex v. Brograve*, 4 Burr. 2491; 1 Bott, 112; it was moved to set aside an order of sessions confirming a rate, on the face of which houses were rated at one half of the annual value, and land at three-fourths. But by the court: "Here is no apparent inequality, and we are not to presume it. There

may be reason to make a difference between lands and houses. For there are several charges incident to houses which do not fall upon lands, to lessen their yearly value.

Rex v. Sillis, Cald. 522. If the proportions in which real and personal property are assessed be *apparently unequal*, (viz. one-half of the realty and one-fortieth of the interest of the personalty at 4 per cent.) the court will quash such poor rate.

Rex v. Butler, Cald. 93; 1 *Bott*, 114. A rate was made, but no difference made in assessing tenements and farms consisting of land and cottages or dwelling-houses; whereas the clear income of the former was at 1*d.* in the pound, to three farthings in the pound of the latter. It had been the custom to rate them nearly in that proportion until 1778, when, at a public vestry, both lands and houses were rated at 1*d.* in the pound, and the same had since continued. By Lord *Mansfield*, C. J. "The question before the court is, does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the court will presume it equal. Circumstances may vary the value of different estates; and if this plainly appear, then what is said in *Rex v. Brograve* (*ante*, 182,) applies: but you take advantage of an *obiter* saying of the court in that case, when the true legal ground of the authority is decisive against you." Rate affirmed.

Rex v. The Inhabitants of Fakenham, 4 *Dougl.* 261. Where an act of parliament directs a rate to be made on the occupiers of land, &c., and on all persons using and having stocks and personal estates, &c., in equal proportion, according to their several and respective values and estates, and it appears that the rate was not made in equal proportion, it will be quashed.

Rex v. The Birmingham Gas-light Company, 1 *B. & C.* 506; 2 *D. & R.* 735; *D. & R. M. Ca.* 385. By a rate for the parish of Birmingham, the Birmingham Gas-light Company were assessed in respect of dwelling-houses, shops, buildings, land, and premises, and the trunks, pipes, and other apparatus for the conveyance of gas belonging to the company, being fixed in the ground, in the parish, and the profits therefrom within the parish; the annual value being stated at 800*l.* and the assessment 20*l.* Case:—By the 59 *Geo. III.* the Birmingham Gas-light Company were incorporated to supply the town with gas, and, with the consent of the commissioners for lighting and paving, to break up the soil of the streets, &c., for laying down pipes and other apparatus for the conveyance of gas from the manufactory to the houses, &c. of the consumers. The company purchased the premises mentioned in the assessment, and placed therein gasometers and other apparatus necessary for the manufacture of gas and coke (part of which apparatus is affixed to the freehold, and part is not), and also, by the consent of the commissioners, broke up the soil in the streets, and fixed therein the apparatus for the conveyance of gas. The company carry on a considerable manufacture of coke and gas upon these premises, and derive a profit from the sale of each of these articles. The coke is conveyed from the premises of the company to the purchasers by carts, and the gas by trunks and pipes. Gas and coke are both manufactured from coal at a great expense of fuel, and the machinery and apparatus necessary for the manufacture of these articles are also very expensive, and require frequent renewal. *Stock in trade, and the profits of the manufactories in the parish of Birmingham, are not rated to the poor in this rate.* If the court should be of opinion that the profits accruing to the company from the sale of gas are not rateable, or that they can only be rated as the profits of a manufactory, the rate ought to be amended by inserting the sum of 200*l.* therein in lieu of the sum of 800*l.*, and the sum of 5*l.* in lieu of the sum of 20*l.* *Abbott*, C. J. "The question proposed to us is not, whether the company be rateable for their buildings above ground, or their pipes under ground, but to what amount they are rateable. I am of opinion that the amount in respect of which they are rateable is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the business there. It appears from the statement in the case, 'that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum, but

9. Principle of Valuation, &c.

An equal rate on lands and houses is not so manifestly unjust that the court will quash it.

But where by a local act land and stock are to be rated in equal proportions, an unequal rate will be quashed.

Under an act of parliament the Birmingham Gas-light Company purchased lands and buildings, and there placed retorts, &c., necessary for the manufacture of gas and coke, and fixed in the streets trunks, pipes, &c., for the conveyance of gas. The company derived a considerable profit from the manufacture and sale of coke and gas. The stock in trade, and the profits of other manufactories in the parish of B. were not rated to the poor: Held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business.

9. *Principle of Valuation, &c.*

if the profits are included, then they are worth 800*l.* per annum.' I am of opinion that the profits are not in this case rateable. If they were, a blacksmith's forge might be rated, not at what it would be let for, but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present is, that here the profits rated are those of a manufactory, which are obtained by applying the skill and industry of man to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters, which are natural products arising within the parish, and rendering the land in which they are situate the more valuable. For these reasons I am of opinion that the rate must be amended by inserting 200*l.* as the value of the buildings and pipes, and 5*l.* as the sum to be paid." Bayley, J. "I am of opinion that the company ought to be assessed, not at a sum equal to the annual profits of their trade, but at that sum which the buildings, trunks, and pipes would produce to them if let at an annual rent to persons willing to carry on the trade, or that rent which the company would be forced to pay if the premises were not their own property." Holroyd, J. "I am of opinion that the rate ought to be amended, as it is stated that in this parish the profits of other manufactories are not rated. In the case of a canal, the land and the water are rated; and here an attempt is made to rate the pipes and the gas; but that cannot be done. The proper criterion for the rate to be imposed upon these lands and buildings is the rent at which they could be let to a person willing to carry on the business." Best, J. "I think that such a construction ought to be put upon the statute of Eliz. as to include the largest portion of productive property, because I feel that the poor-rate, and various other burdens, press heavily upon the landed interest. This rate, however, cannot be supported; it is an assessment upon the profits of trade. Now that is not a correct mode of assessment. Besides, a rate even upon the net profits of any undertaking must be unjust and unequal in a place where similar profits and stock in trade of others are not generally rated. The profits of this company are very different from the tolls of a canal. When a canal is once formed and filled with water, it produces to the proprietor, without any thing further being done, a permanent profit in the shape of tolls; but the gas company could obtain no profit by merely laying down these pipes for the conveyance of gas through the streets. The gas must afterwards be manufactured by the company at a great expense, and sent through those pipes before they will be entitled to any recompense. The gas company stand, therefore, in the same situation as any other manufacturer who produces by artificial means a saleable commodity. Now the profits of such a manufacturer could not, with justice, be rated to the relief of the poor in a parish where other profits and other stock in trade are not rated. I think, therefore, that the company ought to be assessed at that annual sum for which the premises and pipes would let to a person willing to carry on the trade." Rate amended.

Where some lands are rated according to the rent, in rating other lands according to their value, the poor-rate must be deducted.

Rex v. Hull Dock Company, 5 D. & R. 359; 3 B. & C. 516. The appellants were assessed in respect of profits arising from dock dues and wharfage rates received by them. Their net profits for the year amounted to 8900*l.*, after making a fair allowance in respect of repairs and all other expenses incidental to and necessary for making the property profitable, but without making any deduction for poor-rate, which, according to their assessment, amounted to 2225*l.* In giving the judgment, Abbott, C. J. said, "As to the question, whether the rate upon the company should be according to the full amount of their profits, without making any deduction for the sum they are liable to pay for poor-rate, we think that the rate ought not to be so made. This property is to be charged according to its worth and value, in like manner and in the same proportion as other real property is charged in the same rate. If other real property is charged only at three-fourths, or any other part of its value, after making deductions of the same nature as those which have been made in the case of the company, (a) the company ought to be charged

(a) The proportion here would not be necessarily correct. If the landlord keeps the premises in repair, the rent would be less than the rateable value, for an allowance was made to the company in this case for repairs.

in the same proportion. If other real property is charged according to the rack-rent actually paid by the occupier, and according to a rent so estimated, where the occupier is not a tenant at such rent, there will even be in those cases a virtual allowance in respect of the poor-rate, such rent being in reality only part of the worth or value of the land. The whole worth or value is made up of what is paid in rent and what in rates, and other outgoings. Land intrinsically worth 40*l.* can only pay a rent of 30*l.*, if it is to pay 10*l.* per annum in other ways; and in estimating a rent to the landlord and tenant, look to the value of the thing on the one hand, and the outgoings on the other; and the outgoings must be deducted from the value before the rent can be fairly fixed. Wherever, therefore, the rate is according to the rent, which is generally the case, an allowance is virtually made for the poor-rate; and if this rate is made according to the rent, the company should have the allowance. The mode of estimating the allowance is a different thing; that suggested in the case is clearly wrong, for if 2225*l.*, the present rate, is deducted from the 8900*l.*, the rate upon 6675*l.* only, will leave part of the rateable proportion of 8900*l.* (a) free from rate. The allowance must be so made that the sum upon which the annual rates are made may, with the amount of the rates, make up the 8900*l.* The sum, according to the present rate, will be 7120*l.*, and the sum to be paid by the company will be 1780*l.* The process of calculation must be adapted to the amount of rate. It is sufficient for us to propound the rules, leaving the process of calculation to others."

9. *Principle of Valuation, &c.*

Rex v. Attwood, 9 D. & R. 328; 6 B. & C. 277. The appellant, Attwood, was proprietor and occupier of a coal mine, upon which he had expended 10,000*l.* in planting the mine and setting it to work. It had been at work one year and a quarter, and the value of the whole coals raised did not exceed 5000*l.* The full value of the annual produce, after deducting expenses of working, amounted to 428*l.* 9*s.*, at which sum it was rated. The other appellants were rated for other mines upon the annual sums paid by them for royalties or rent. Abbott, C. J. "We are all of opinion that the owner and occupier of a coal mine should be rated at such sum as it would let for, and no more. As to the other points, the first was, that the rate should not be imposed upon the coal produced, because that was part of the realty. It is the first time that such a proposition has ever been submitted, although many coal mines in various parts of the country have constantly been rated, and the argument in support of it is wholly untenable. The legislature has expressly made coal mines rateable, and they must be rated for what they produce, viz. the coals. Slate quarries and brick earth are also exhausted in a few years, but nevertheless the rate is always imposed upon that which is produced. The other argument was, that the rate could not be imposed until the expenses of planting the mine had been recouped. But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state, and in building a house. The attempt to distinguish them is perfectly novel; and if a house is to be rated as soon as built and occupied, it must follow that a coal mine is rateable as soon as it is set at work and produces coals, although it may happen that the expense of sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for the improved value." Order of sessions amended (c) as to the rate upon Attwood, and confirmed as to the residue of the rate.

Rent the criterion without reference to the sum expended in rendering it so profitable.

Rex v. The Trustees of the Duke of Bridgwater, 4 Man. & R. 143; 9 B. &

The occupiers of a canal, who are also carriers, are rateable only according to the tonnage.

(a) It will be observed that the court were of opinion that the assessment of 2225*l.* on the company was too large, and ought to be reduced to 1780*l.* This latter sum only thus became payable out of their profits, and ought to be deducted.

(b) This was before the 41 G. III.

(c) Attwood was rated at the full annual value, which would include both the landlord's and tenant's profit. The other appellants were rated only according to the rent, and therefore the rate on Attwood was reduced to the sum it would let for.

9. *Principle of Valuation, &c.*

Rent not a certain criterion of value.

Actual rent a criterion, unless it can be clearly shown that it is too small. Interest of a mortgage paid by the lessees is in substance rent. The annual value *communibus annis*, and not in a particular year, is the criterion.

C. 68. In this case the defendants were rated in proportion to the full amount of the gross receipts as owners as well as occupiers of land taken for the canal, towing paths, warehouses, wharfs, &c.; whereas the occupiers of farms and premises in the same parish were rated only in proportion to the rent paid by them respectively. *Bayley, J.* in delivering the judgment of the court, said, "The same principle of rating must be adopted whether the party be owner and occupier, or occupier only. I lay out of consideration the fact of the trustees being carriers, because their occupation only is to be considered. The profits of carrying goods are the profits of their *trade*. The tonnage is the profit of the land occupied by them. The principle of our decision in this case is, that the same rule is to be applied to all occupiers, and *that the rent or sum at which the land will let, is the criterion of the value of the occupation.*" (*Rex v. Adames*, 1 Nev. & M. 662; 4 B. & Ad. 61, *post*, 189; *Rex v. Joddrell*, 1 B. & Ad. 404, *post*, 191.)

Also in *Rex v. Skingle*, 7 T. R. 549; 1 Bott, 218; 1 Nol. P. L. 225; on an appeal against a poor rate, the ground of the appeal was, that William Hill and John Bull were under-rated, the lands in their occupation being now of a greater annual value than the rent reserved by the lease, and the rate was made according to the rent: but the court were of opinion that the case was too clear for argument, and that the rate ought to be regulated according to the *improved value*. So *tolls* are to be rated according to the annual value at which they might be let, though *prima facie* actual rent is the criterion, but not absolutely so. (1 Bar. & Adol. 932, 933.)

The *King v. Chaplin*, 1 Bar. & Adol. 926, H. T. 1 Will. IV. This was an appeal against a rate of the parish of Tetney, wherein the appellants were rated in the sum of 14*l.* 19*s.* 10½*d.* upon the annual rental of 299*l.* 17*s.* 6*d.* as occupiers of lands taken from the Louth canal towing paths, &c. with the profits arising therefrom. Rate confirmed. Case:—By 3 Geo. III. c. 39. commissioners were empowered to make a navigable canal from the river Humber to the river Ludd, and to continue the same to the town of Louth, and for that purpose to borrow money upon the security of the tolls. The commissioners borrowed 28,000*l.* at 5*l.* per cent., and expended the same in making the canal. This act was repealed by 9 Geo. IV. c. 30, and the canal, with the soil thereof, and the towing paths, locks, and appurtenances were by the last act invested in commissioners, who, in pursuance of a certain provision therein, demised the canal and soil thereof, together with all the tolls, dues, proceeds, and forfeitures imposed and authorized by that act, to the appellants for a term of forty-eight years from the 24th of June, 1828, subject to the payment thereout of the interest on the above sum of 28,000*l.* in default of which payment the commissioners might require the collectors to pay such interest out of the money that might then be in or might thereafter come to their hands; and the collectors were to be allowed such payment in account with the lessees, the tolls being appropriated in the first instance to the satisfaction of this charge. The canal passes through twelve parishes, and one fifth of the whole extent lies in the respondent parish of Tetney. The lessees are further liable to all the expenses of maintaining and repairing the canal and its works, collectors' salaries, &c. (The case then went into details as to the expense of the canal, the receipts, and the mode of collection.) The annual earnings of the whole canal are 3418*l.* 8*s.* of which the proportion corresponding to the length of the canal in Tetney, namely one fifth, would be 683*l.* 13*s.* 7*d.* The annual earnings of the canal in Tetney are 788*l.* 17*s.* 3*d.* or three thirteenths of the earnings of the whole canal, upon which three thirteenths the present rate was imposed. If the court should be of opinion that the rate ought to be imposed on one fifth instead of three thirteenths, the rate was to be reduced accordingly. The appellants claimed deductions on account of the following sums: 1400*l.* being the interest on the mortgage debt of 28,000*l.*; and 341*l.* 16*s.* 9½*d.* as the reasonable profit to a tenant to occupy, at ten per cent. on 3418*l.* 8*s.*; a further deduction on account of average annual expenses for repairs, &c. which on the whole canal amounted to 881*l.* and of which 163*l.* were incurred in the appellant parish; and a further sum on account of poor's rates and other parochial taxes, which on the whole extent of the canal amounted

to about 100*l.* If the court should be of opinion that the appellants were entitled to any of these deductions the rate was to be reduced accordingly. The preamble of the 9 Geo. IV. recited that the commissioners under the former act having borrowed the said sum of 28,000*l.* and having incurred considerable expense, and being in want of funds, entered into an agreement with C. Chaplin, Esq. (for the good of the navigation, and as the only means of raising the necessary funds,) that the canal and navigation, subject to the orders of the commissioners as in the act mentioned, with all the tolls arising from the said navigation, and all the estate and interest of the commissioners therein, should be vested in the said Mr. Chaplin, his executors, &c. for ninety-nine years; and he thereby agreed to accept the trust, do the works to be ordered by the commissioners, pay all the interest of the money borrowed, at five per cent., by half-yearly payments, and make some other advances. The statute then recited, that doubts had been entertained as to the authority of the commissioners to make such agreement; that the said C. C., and those claiming under him, had, after the making of the said agreement, and on the faith of it, expended considerable sums (in particular, two sums of 7000*l.* and 4000*l.*) on the navigation; that the agreement was entered into by the commissioners *bona fide* for the benefit of the public, and was in fact beneficial to the public at the time it was made; and the benefit accruing therefrom to the said C. C. and those claiming under him had not been disproportioned to the risk run by the said C. C.; that the agreement had been acquiesced in by all parties for nearly fifty-one years, and it would be for the benefit of the public that the same should be sanctioned for the remainder of the said term of ninety-nine years, but subject to a reduction of the tolls of the navigation by one half, as to some articles, and one third as to others. The commissioners under the new act were therefore empowered to grant to the persons entitled to the beneficial interest under the above agreement, and their executors, &c. a lease of the navigation and tolls for forty-eight years, being the residue of the term of ninety-nine years in the agreement mentioned; provided that the lessees for the time being should be subject to all the payments, rules, regulations, &c. mentioned in the former act. Under this enactment the demise stated in the case was made. Lord Tenterden, C. J. "The rate must go back to be amended. In cases of this kind, which have hitherto occurred, the canal has been in the hands of the original proprietors, and the object has been to ascertain what it would be worth to let, which has sometimes been difficult. But here the canal is actually let, and therefore there is no occasion to speculate on that point. The 1400*l.* interest is in effect a rent, though there is no actual payment to the lessors. The tolls are appropriated to the purpose stipulated by them, and in case of default they may call upon the collectors to make good the payments out of the monies in their hands. It was contended that this was a beneficial lease; but taking the several recitals of the act 9 Geo. IV. c. 30, together, I think that does not appear. The commissioners in the first instance assigned the canal to Mr. Chaplin for the good of the navigation, and as the only method for raising the money necessary for putting it into repair; and the act recites that he and those claiming under him did in fact lay out considerable sums of money upon it, that the bargain was beneficial to the public, and is likely to be so if continued; and it states that the benefit as yet derived from it by the lessees has not been disproportioned to the risk originally run; but lest the lease should become too beneficial during the remainder of the term, the tolls are reduced. I think then there is no ground for saying that the 1400*l.* is not such a sum as may be properly considered the value of the navigation, and as three thirteenths of the profits arise in the parish of Tetney the rate must be laid on three thirteenths of 1400*l.*" Littleton, J. "I am of the same opinion as to the argument which is drawn from the amount of present earnings. It might as well be said that where a farm is let, the year's profit on each particular crop is to be taken into consideration in fixing the rate. In the case of a property so lately let, the actual rent is the best criterion of value; perhaps it might be otherwise, if the letting had been ten or twenty years ago, and it appeared that the profits had very materially increased or diminished since." Taunton, J. "The tolls of a canal, like the profits of land, are to be valued at what they

9. *Principle of Valuation, &c.*

The machinery is rateable in addition to the mine rent, as constituting the improved annual value, if the whole would let for the entire sum assessed.

Annual value part only of annual rent.

would let for *communibus annis*, and it has I believe been held (a) that no difference is to be made, because in one particular year there was a loss. In ascertaining what a property is worth to let, the best criterion in general is what it actually does let for. When, therefore, in this case, the value was estimated from the earnings of a single year, a wrong basis of calculation was taken. Here is a rent spreading itself over a period of forty-eight years, and the produce in one is no proof what the average will be. Here in point of form there is no rent, but a payment of interest; it is however in the nature of rent. Instead of the lessee's paying 1400*l.* a year to the proprietors, and their handing it over to the mortgagee, the lessee pays it to the mortgagee at once." *Patteson, J.* "Where the land is not actually let, it becomes necessary to calculate what a tenant would pay for it where it is let. The actual rent is the criterion, unless it can be clearly shown that that is too small; but that is not ascertained by enquiring whether the property was more or less beneficial in a particular year." Rate to be amended.

Rex v. Lord Granville, 4 *Man. & R.* 171; 9 *B. & C.* 188. The defendant was lessee and occupier of a coal mine or colliery. In this year he paid royalty to his landlord for a mine rent upon the coals raised the sum of 802*l.* 8*s.*, which sum was a *fair mine rent* for a tenant to pay upon the quantity of coals raised in that year. The defendant some time since erected several steam and other engines in the colliery, which are used solely in draining the mines and raising the coals to the surface; he also laid down a railway, which is solely employed in facilitating the carriage of the coals. This forms the machinery with which the mines were worked, and without which there could be no coal raised and no mine rent, and it was assessed at 187*l.* 10*s.*, in addition to the above sum, making together 989*l.* 18*s.* It was calculated that this latter sum would be a fair rent for the whole colliery and machinery, if now let to a sub-tenant. *Bayley, J.* "I have no doubt that the defendant ought to be rated for his engines and railway. Whether the sessions have made proper deductions we are not to decide. The only point for our consideration is, whether the defendant ought to be rated for the engines and railway. If the owner had occupied the mine, he would have been liable to be rated according to the improved value of the property; and where the owner of a mine fixes an engine, or otherwise by expenditure of his capital raises the value of his property, he will be rateable for the value of the property so improved by his expenditure. If it be leased to a tenant who is to incur the same expenditure of erecting an engine, the owner will receive a less royalty; but as a greater quantity of coal will be raised, the tenant will be thereby remunerated for his expenditure, and I think the tenant being the occupier, is liable to be rated for such improved value." *Littledale, J.* "It is immaterial, with reference to rateability, whether the landlord or tenant erect an engine or lay down a railway. The bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect of its improved annual value." *Parke, J.* "The question left to us is, whether the defendant be liable to be rated for improvements? I think he clearly is. It is found by the sessions that the value of the property is raised by the improvements from 802*l.* 8*s.* to 989*l.* 18*s.* Whether the amount of the rate is precisely what it ought to be, it is not for us to determine. The sessions seem to have estimated the value according to the sum at which it would let to an undertenant. That perhaps may not be the correct principle on which such property ought to be rated. The annual value is part only of the annual rent: some portion of that rent should be considered applicable to repairing and replacing the engines. In *Rex v. Tomlinson* (*ante*, 181), this distinction was taken. The only question for us however is, whether it be right in principle to rate the lessee in respect of an annual value increased by reason of improvements made by himself? I think he was properly rated for the improved value." Order of sessions confirmed.

In *Rex v. The Oxford Canal Co.*, 4 *B. & C.* 74; 6 *D. & R.* 86; 3 *D. & Ryl. Mag. Ca.* 56, *S. C.*; the same principle of rating was directed to be

(a) See *Rex v. Hull Dock Company*, 5 *M. & Sel.* 394, *ante*, 179.

observed with respect to the canal tolls, *Abbott*, C. J. saying, "As to the amount, it appears that other lands are rated according to the amount which would be obtained by letting them at a rent: this company therefore must be rated according to the same rule."

Rex v. Oxford Canal Company, 5 *Man. & R.* 100; 10 *B. & C.* 163. In fixing the amount of the rate for which the company was liable, the sum paid by the proprietors for the poor rate, the expense of collecting the tolls, of repairing the banks of the canal, and of supplying it with water, ought to be deducted from the gross profit. Upon this point, during the argument, *Bayley*, J. observed, "There can be no doubt the poor rate, the annual repairs, and the expenses of collecting the toll must be allowed. The sum which remains after making such deductions constitutes the net profit." *Parke*, J. "In strictness, all the profits ought to be rated, but inasmuch as tenants' profits in respect of other lands in the parish are not rated, the tenants' profit in respect of land occupied by the canal company ought not to be rated." It appeared that the annual repairs of that part of the canal situate in the parish amount to 20*l.*, the annual repairs of the whole line of the canal amount to 4000*l.*; and in reference to the question whether in fixing the rate there should be deducted that proportion of the whole sum expended in repairs, which the length of the canal in the parish of Foleshill bears to the whole line of the canal, or whether only the expense of repairs incurred in that part of the canal situate in Foleshill, *Bayley*, J. said, "The rate is to be in proportion to the value of the land in the parish where the rate is made: therefore all expenses incurred in repairing that part of the canal in that parish must be allowed." *Littledale*, J. "The banks in one parish may require more repair than in another, or there may be locks which require frequent repair; so that it may happen that a given part of a canal may yield no profit whatever." Counsel further urged that a deduction must also be made for the expense of supplying water for the canal. It is analogous to the expense of manure used in the cultivation of land. Without the supply of water, the canal can produce no profit whatever. The fair rent of land, is the value of the land after deducting the expenses of cultivation. *Bayley*, J. "There must undoubtedly be an allowance made upon that account; the quantum will be the question for the sessions. We can only lay down the principle. We never fix the quantum, unless the sessions tell us the principle upon which they have fixed the quantum, and their calculation appears to be erroneous." (See *Rex v. Joddrell*, 1 *Bar. & Adol.* 403, *post*, 191.)

Rex v. Adames, 1 *Nev. & M.* 162; 4 *B. & Adol.* 61. By a rate for the parish of Pagham the appellant, who was the owner and occupier of lands lying within a district of the parish called Pagham Level, was assessed at 312*l.* 14*s.* which was the amount at which the land would let for, making no allowance for the sewers' rate, which is a landlord's tax. *Cur. ad. vult.* *Parke*, J. "The question for the opinion of the court in this case, is in effect whether an occupier of lands in a district of the parish of Pagham which is liable to be flooded, and is protected from floods at a certain occasional expense (for that is the nature of the sewers' rate), ought to be rated at the same sum as the occupier of lands of similar quality and of equal annual produce, lying in the same parish, but not liable to the same expense. We are of opinion that he ought not. It is obvious that the average annual net profit of one description of land is not the same as that of the other; and both upon principle and authority we think the rate ought to be made in proportion to that profit. The statute 43 *Eliz. c. 2*, requires the churchwardens and overseers to raise competent sums, by the taxation of every occupier of lands, according to the ability of the parish: nothing is expressly said as to the principle upon which the rate should be made, but it is implied that it must be made with equality, and with some reference to the subject of occupation. Now it is quite clear it ought not to be made according to the profit derived by the occupier himself; for if that were so, the rate must vary according to the nature of the occupier's interest. An occupier who is tenant at will at rack-rent, and therefore receives a less share of the annual profit of the land than one who is tenant for years at a small rent, and still less than one who is a tenant in fee

9. Principle of Valuation, &c.

In estimating the value of the tolls upon which the rate is to be made, deductions for repairs, expenses of collections, and other charges must be made from the gross amount of tolls received.

Reason for not rating all profits.

The expenses of the canal in each parish to be deducted.

Also of supplying water.

9. *Principle of Valuation, &c.* simple, and pays none at all, would be rateable at a less sum, a proposition which was never yet contended for. Again, it is quite clear that though the occupier is the person who nominally pays the tax, it is in reality paid by the beneficial owner, and is a charge upon the land. In proportion as the average tax which the tenant has to pay is greater, in the same proportion will he give less rent to the owner. Ultimately in the long run, this will always be the case; though when the tenancy is for a term more or less long, the burthen upon the landlord is postponed for a greater or less period. This being so, it follows that in order to make an equal rate, the nature of the occupier's interest must be disregarded, and the rate imposed according to some value of the subject of occupation. Usage and convenience have established this value to be not that of the estate or property itself, but that of the profit which is or might be made from the estate or property; and as it would be very difficult and extremely troublesome to ascertain the precise value of that profit during the time for which each rate is made, and in case of occasional profit both troublesome and unjust, (*Rex v. Mirfield*, 10 East 219, ante, 169; *Rex v. Hull Dock Company*, 5 M. & S. 394, ante, 179,) to make a rate for a large sum at one time and a small one or none at another upon the same land, the rule has been to assess according to the annual profit of the land; or, where the produce is not matured in one year, then upon an average of years, from which profit deductions are allowed for all the expenses necessary to its production. It is not material whether the whole or a certain aliquot part of that net profit be rated, provided all lands of the same description are rated equally upon that aliquot proportion of the profit; and in practice it is usual, and it is most convenient, to rate lands at the rack-rent which they would pay to a landlord, or some certain portion of it, the tenant paying all rates, charges, and outgoings; which is in effect rating according to a part of the net profit only; but provided it be the same aliquot part in all cases, it makes no difference. Further, if the subject of occupation be of a perishable nature or require an annual expense to secure its existence, an allowance ought to be made on this account, for the total annual profit is not the net annual profit; a part must be set aside for the restoration and maintenance of the subject of occupation. It is on this principle that buildings have been permitted to be rated at less in proportion than arable and other land. The cases, especially those of a more recent date, in which the principle of rating has been more fully discussed and considered, will be found to have established this rule of rating, which is, in other words, that all lands are to be assessed in proportion to the net rent which a tenant at rack-rent would pay, he discharging all rates, charges and outgoings. It may be sufficient to refer to the following authorities in support of this position. (*Rex v. The Birmingham Gas Light and Coke Company*, 1 B. & C. 506, 2 D. & R. 735; *Rex v. Hull Dock Company*, 3 B. & C. 516, 5 D. & R. 359; *Rex v. Attwood*, 6 B. & C. 277, 9 D. & R. 328; *Rex v. Trustees of the Duke of Bridgewater*, 9 B. & C. 68, 4 Man. & R. 143; *Rex v. Tomlinson*, 9 B. & C. 163, 4 Man. & R. 169; *Rex v. Lower Mitton*, 9 B. & C. 810, 4 Man. & R. 711; *Rex v. The Oxford Canal Company*, 10 B. & C. 163, 5 Man. & R. 100; *Rex v. Joddrell*, 1 B. & Ad. 403) It remains only to apply the principle to the present case, and there can be no difficulty in saying, that land which requires some occasional expenditure to preserve it from being damaged by water, and to make it as productive as it is, would let for less rent than similar land which requires none, the tenant defraying amongst others that occasional expenditure. In other words, the net average annual profit of both is not the same, and consequently the rate ought not to be the same. In the course of the argument a question was asked, whether land of which the land-tax was redeemed ought to be rated higher than land of the same quality, which is still chargeable with the tax. The answer is, that it ought not: the annual net profit of both is the same, though such annual profit in the latter case is liable to a tax from which it is by law exempted in the former. The rate in the present case must therefore be amended. I must add that this is the judgment of myself and my brothers *Littledale* and *Patteson*, who heard the argument. Lord *Tenderden* was of a different opinion." *Taunton*, J. then said that he concurred in the judgment delivered.

Rex v. Joddrell, 1 Bar. & Adol. 403. This was a rate for the parish of Yelling, which had been enclosed under the 59th of Geo. III., by which the tithes were extinguished and a compensation made in lieu thereof. This rate was made on the amount of the rack rent which the farms were letting at and were worth to let at the time. E. Bull, the occupier of one farm, was assessed at 226*l.*, which was the rent paid by her without any deduction. E. B. was not assessed in respect of the corn rent or compensation for tithe paid to the rector for the same, amounting to 93*l.* 6*s.* 6*d.* The appellant, the rector, is assessed in 368*l.* in respect of the gross payments for compensation for tithes, amounting to 452*l.* 2*s.* ½*d.* and that the deduction in the assessment allowed the rector (to wit) 83*l.* 2*s.* ½*d.*, which is the amount of parochial dues levied on 451*l.* 2*s.* ½*d.*; it was objected that the farms should have been assessed in the amount of the rent paid to the landlord, added to the amount of the compensation paid to the rector, such being the actual value of the land to let at rack rent: and also that the appellant was assessed at such a sum as with his poor rate made up the full gross amount of the corn rent, the profit accruing to the occupiers beyond the amount of the rate, and beyond the amount of the interest of capital employed, and of expense of cultivating lands, including compensation for the farmer's trouble and labour and superintendence, ought to have been included in these assessments: and also the corn rent was not worth 368*l.*, the appellant being liable in respect of such sum to the payment of land tax and ecclesiastical dues beyond the parochial rates, and having further to do or provide for the duties of the incumbency. *Cur. adv. vult.* Parke, J. "This was a question between the rector of a parish and the farmers in it, as to the extent to which he on the one hand and they on the other ought to be rated. The tithes in the parish were extinguished, and the rector had a corn rent or compensation in their stead. He was rated to the full extent of all he received, with the deduction only of what he paid for parochial dues. He claimed as additional deductions the amount of his land tax, the amount for what he paid for ecclesiastical dues (which would include tenths, synodals, &c.), and a compensation for performing or providing for the duties of his incumbency. The farmers were rated at the *bonâ fide* amount of the rack rent at which the farms were letting, or which they were worth to let, the tenants paying the corn rent or compensation for tithe; and the rector contended that they ought to be rated in addition upon that corn rent or compensation they paid him, and upon their share of profit beyond the rent. The great point to be aimed at in every rate is equality, and whatever is the proportion at which, according to its true rateable value, any property is rated is the proportion in which every other property ought to be rated. The first thing upon every rate therefore is to ascertain the true rateable value of every property upon which the rate is to be imposed, and the next to see upon what proportion of that value a rate is in fact imposed. In the case of land, the rateable value is the amount of the annual average profit or value of the land after every outgoing is paid, and every proper allowance made, not however including the interest of capital, as the sessions have done, for that is a part of the profit. Tithe is an outgoing, and therefore the corn rent or compensation for tithe in this case is not to be added to the amount upon which the farmer is rateable; and in respect of that proportion of the annual profit or value, which consists of tithe or corn rent, the rector is himself to be assessed. We think therefore that the sessions were right in overruling the first objection. The second objection was, that the farmer's share of profit ought to have been rated, or, which is the same thing, that the appellant should have been rated proportionably less, and that objection should in our opinion have prevailed. Of the whole of the annual profits or value of land, a part belongs to the landlord in the shape of rent, and part to the tenant; and whenever a rate is according to the rack rent (the usual and most convenient mode), it is in effect a rate on a part of the profit only. It must therefore in the next place be ascertained what proportion the rent bears to the total annual profit or value, and that will show in what proportion all other property ought to be rated. If, for instance,

9. Principle of Valuation, &c.

By act of parliament the tithes in a parish were extinguished and the rector entitled to a corn rent, for which he was assessed to the full amount less the parochial rates. The farmers who paid the corn rent were rated upon the amount of their rack rent. Held, that the tenants ought not to be rated for a sum made up of the rack rent paid to their landlords, and the corn rent paid to the rector; but that they were properly rated on the amount of the rack rent only. And also, that the rate was unequal, as the farmer was rated not for the full value of the land which comprized the landlord's and tenant's profit, while the rector was rated for the full value of his corn rent. And, that in estimating the amount at which the rector ought to be rated, the land tax ought to be deducted from his corn rent, provided the tenants of the other lands in the manor paid the land tax without being allowed for it by the landlord, but not if such allowance was made. Held also, that allowance ought to be made to the rector for ecclesiastical dues, which were a charge upon the rectory, but not for the expenses of providing duties of incumbency.

9. *Principle of Valuation, &c.*

the rent is one half or two thirds of the total annual profit or value of land, the rate on all other property should be on a half or two thirds of its annual value. In this case it is clear that there was a share of profit received by the tenant upon which there has been no rate, and in that respect the farmers were assessed in a less proportion of the true annual profit or value than the appellant. The sessions were therefore wrong in disallowing this objection, and they ought to ascertain the ratio which the rent of land bears to its average annual profit or value, and assess the appellant for his tithe rent in the same ratio. The last objection was, that the appellant ought to have had the land tax, ecclesiastical dues, and expenses of providing for the duties of incumbency deducted. As to the land tax, that is always in practice paid in the first instance by tenants, and whether it is to be deducted or not in this case must depend upon the answer to a previous question, whether the tenants in the parish deduct it from the rent specified or not. If they do, the landlord pays it in effect out of the rent he receives, and the appellant, to be on the same footing, must do the same; in that case it must not be deducted in making the rate on him. But if the tenants pay the specified rents and the land tax besides, then they have in effect not been rated upon that proportion of the annual profit or value with which the land tax is paid, but upon a part of the residue only, after deducting the land tax. Upon this supposition the appellant must also be rated in a proportionate part of his profit, after deducting the land tax. The ecclesiastical dues ought to be allowed, because they are payable by the appellant in respect of his rectory, and the profits of the rectory constitute the only fund out of which they can be paid; but the expenses of providing for the duties of incumbency ought not to be deducted, because those duties are personal, and ought to be performed personally by the incumbent. The last objection therefore ought to prevail in part. The case must, for these reasons, be sent back to the sessions, who must amend the rate, acting as nearly in conformity to the principle here laid down, as their means of investigation will admit, a precise and accurate application of it is we are well aware impracticable.

10. *Where Property to be rated.*

In parish or parishes where property lies.

10. *Where Property to be rated.*

It has been observed, and the words of the 43 Eliz. are to that effect, that real property, whatever may be its kind, if it is rateable, shall be rated *in the parish where it is situated*. Thus all who occupy *real* property within the district, though dwelling elsewhere, come within the act. So that if a man occupies lands in the several parishes of *A. B. and C.*, and reside in the parish of *D.*, he is liable to be rated in all the *four* parishes; in *A. B. and C.* for the land he occupies in each respectively, and in *D.* as an inhabitant; *Jeffrey's case*, 5 Co. 66; 1 Bott, 122; but he cannot be rated for *personal* property which is not within the parish where he is an inhabitant. *Rex v. North Curry*, 4 B. & C. 953; 6 D. & R. 424.

Coal mine extending into several parishes to be rated in each, the shaft or entrance be only in one parish. *Rex v. Foleshill*, 1 Harrison, 71; *aliter* as to *Mineral Spring*, *id.* 73.

In ordinary cases, therefore, no difficulty can arise upon this subject; but where there is an unbroken occupation extending through several parishes, and the profits arising from such occupancy are received in one or more of the several parishes, and not in due proportions in all, the respective claims of the several parishes for poor rates do not appear so susceptible of a satisfactory adjustment. Accordingly, the reports present many cases in which this question has arisen, upon the rating of canals, gas-works, &c. It was formerly holden that navigations and canals were rateable in those parishes only in which the *tolls were payable*; but it is now settled that these companies are rateable to the poor in every parish through which their canals or works pass, in proportion to the profits which the land occupied by them in such parish yields. Thus where a canal passed through several parishes, in which the tonnage dues varied, it was held that the company were rateable to the relief of the poor of each parish for the amount of tonnage dues

actually earned *there*, and not for part of the *whole* amount earned along the whole line of the canal, in proportion to the length of the canal in that parish. *Rex v. Inhabitants of Kingswinford*, 1 M. & R. 20; 7 B. & C. 236. In like manner, the main pipes of water-works are now holden to be rateable in the several parishes in which they are laid. *Rex v. Mayor of Bath*, 1 East, 609; *Bott, cont.* 91; *Rex v. Rochdale W. W. Co.*, 1 M. & S. 634; *Bott, cont.* 106.

The cases on this subject, somewhat abridged, are as follows. It will be perceived that in some of them the question whether tolls are rateable, and in what manner they may become so, is also discussed and determined.

Rex v. Palmer, 1 B. & C. 546; 2 D. & R. 793. S. Palmer was charged for a wharf and buildings situate in Fornham All Saints, adjoining the river Lark, and occupied for the purposes of navigation of the said river, and the towing paths, sluices, &c. within the parish of Fornham All Saints, and the tolls arising therefrom due at Fornham All Saints. By 11 & 12 Will. III. s. 1, H. Ashley, Esq. was empowered to make navigable the river Lark, and after making satisfaction to the land owner, to have the cuts, towing paths, &c. and to receive for the freight of goods, at such place adjoining the river as he should think fit, certain tolls, and a proportionate toll according to distance. Mr. Ashley made the river navigable from Mildenhall to Fornham All Saints, a distance of twelve miles and a half. Half the channel, the towing path and the half of one sluice and two locks are in Fornham All Saints. The towing path is separated from the adjoining lands by a ditch. The appellant is not an inhabitant of Fornham All Saints. She is the owner under a distinct title of a wharf or coal-yard, of about four acres, lying in that parish, and adjoining the extremity of the navigation, in which wharf are several warehouses; different portions of this yard are allotted to the coal merchants who use this navigation, to the number of fourteen or fifteen. They pay no rent, but keep division fences. Large quantities of coals are carted at once from the boats, and not deposited in the coal-yard; but it is necessary for the accommodation of the wholesale dealers using the navigation, that they should have a place to deposit their goods, but the appellant is not bound to provide such place. The buildings and the outer fences and walls inclosing the wharf and the towing paths, locks, and sluices, are repaired by the appellant, and were erected by her or her ancestors. Up to 1816, the appellant was rated on a rental of 17*l.* for the coal-yard, and no rate was imposed upon the profits of the navigation. The annual value of the coal-yard as mere land, is not above 3*l.* Since 1816, she has been rated in Fornham, "for tolls arising from the navigation and warehouses," at 250*l.* per annum. The tolls becoming due, and received by the appellant for goods landed in the parish of Fornham All Saints, equal the amount of the assessment. *Abbott, C. J.* "I entertain the greatest reverence for the opinion of the learned judges who decided those cases. (a) It must be recollected, however, that when those cases came before the court, it had not been decided that tolls *per se* were not rateable. This is now fully established by *Rex v. Nicholson*. The proprietors of a navigation are, therefore, rateable only as the occupiers of the land, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there situate, and so used for the canal. The true principle of rateability is this: the land is to be rated to the relief of the poor in the parish where it is productive of profit to the proprietor, and in proportion to that profit, which may be considered as in the nature of a rent received by the proprietor for the use of his land within the parish. This is very different from the case of a sluice. In that case the tolls become due for the use of a sluice itself, and the proprietor must contribute to the relief of the poor in that parish where the sluice is situate. The proprietor of a navigation is to contribute in respect of the profits of land, extending probably through many parishes; and he is to pay to each of those

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Decisions as to tolls being rateable, and in what proportion in each parish.

The proprietors of an inland navigation are rateable to the relief of the poor in every parish through which the navigation passes, as occupiers of the land situate in each parish, used for the purpose of the navigation; and therefore, where the proprietors of such a navigation, which extended through different parishes, were rated in one for the entire amount of their tolls, the rate could not be supported.

True principle of rateability;

of a sluice.

(a) *Rex v. The Aire and Calder Navigation*, 2 T. R. 660; *Rex v. Page*, 4 T. R. 543; *Rex v. The Proprietors of the Staffordshire and Worcester Canal*, 8 T. R. 340.

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The proprietors of a navigation extending through several parishes are to be rated in an intermediate parish, not in respect of the riverage becoming due in that parish for goods landed there, but in respect of the profits of the land used for the navigation situate within the parish.

Rex v. Woking.

A company's bridge standing in two parishes is rateable in both, although the tolls are received in one only.

A canal company are rateable to the relief of the poor in each and every parish through which their canal passes, as occupiers of land covered with water.

parishes in respect of his land locally situate within it. Here, the whole land occupied by the canal contributes to produce the entire amount of the tolls, and the proprietor of the navigation ought not to have been assessed at that amount in any one of the parishes through which the canal passes. The rate, therefore, cannot be supported, and the order of sessions must be quashed."

Rex v. The Earl of Portmore, 1 B. & C. 551; 2 D. & R. 798, S. C.; 1 D. & R. Mag. Ca. 422. Defendants were rated, as proprietors of the river Wey, upon the tolls earned within the parish. By an act of Car. II. "for preserving the navigation of the river Wey," the soil of the river and of the banks, &c., and the locks, &c., were vested in certain persons, to be used and navigated by them only, and not by any other person, without their leave. The defendants are the proprietors of the river and navigation, and liable as such to be rated. They are not themselves carriers upon the river, nor the owners of any vessels navigated thereon; but every vessel navigated thereon is navigated by their leave, which is uniformly granted. The persons licensed to navigate any vessel, pay the proprietors of the navigation a certain riverage for every ton of goods. The navigation extends from Guildford to the Thames, through several parishes, and among others the parish of Woking, and many tons of goods annually pass through that parish, to and fro, in vessels using the navigation to different places of destination; but the goods annually landed within the parish do not yield riverage to the amount in respect of which the defendants are assessed. The question was, whether the proprietors were rateable, except upon the amount of the riverage arising from the goods landed within the parish. It was admitted, however, that, according to the principle laid down in the preceding case, the proprietors were liable to be rated in Woking in respect of the profits of their land, situate within that parish; and if so, that the riverage payable on goods landed there would not be the correct measure of those profits. And see *Rex v. Woking*, 5 Nev. & Man. 395, S. P.

Rex v. Barnes, 1 B. & Adol. 113. The Hammersmith suspension bridge is at one end in the county of Middlesex, and the other in the county of Surrey. It was erected by a company, and the surplus receipts are divided among the shareholders. The gate at which the tolls are received is on the Middlesex side, and the company paid to the poor rates on that side; but upon being assessed on the other side, where no tolls were taken, they appealed, and the sessions granted a case. *Bayley, J.* "This is a very clear case. The proprietor of land is liable to be rated to the relief of the poor in the parish where the land lies. The Hammersmith Bridge Company have, in the parish of Barnes, land used by them for the purpose of facilitating the passage over the Thames, and they are entitled to receive from all persons passing their bridge certain tolls. Then what is the character of their occupation of that land? It is a valuable occupation in respect of the money which the land produces to the company, by being appropriated to the purpose of facilitating the passage over the Thames, for which passage they receive tolls. The quantum is a question for the sessions. All that we decide is, that the land is rateable property in the place where it is situate. There the profit is earned, though the money may be actually received elsewhere." *Littledale, J.* "The tolls are payable for passing over the bridge, not for passing through the toll-gates. The gates are put up merely to prevent persons passing over the bridge without paying the toll." *Parke, J.* concurred. Order of sessions quashed.

Rex v. Proprietors of the Navigation from the Trent to the Mersey, 2 D. & R. 752; 1 B. & C. 545. The appellants were by an act of 6 Geo. III. empowered to purchase lands to them and their successors, for making a navigable canal from the Trent to the Mersey. And to take, for their own use, for tonnage and wharfage, for all goods conveyed upon the canal, rates not exceeding one penny halfpenny per mile for every ton, which rates were to be paid at such places near the canal as the company should appoint. All persons had liberty to navigate with boats upon the canal, upon payment of such rates. A part of the canal, in length about one mile and fifty-two yards, comprising the land for which the defendants were rated, passes through Findern. The company have no other property in the township, except the

canal and towing-path. No tolls are received in the township, nor do any tolls become payable, the company not having so directed; the company receive annually a much larger sum than that in respect of which they are assessed, for tolls for the passage over that part of their canal which lies in Findern. The canal company derive very considerable annual profits from the canal. The counsel being asked whether they could distinguish this case from those which had decided the principle, that a canal is rateable to the relief of the poor in every parish through which it passes, according to the value of the land covered with water; they confessed their inability to distinguish it from *Rex v. Milton*. Understanding that the court decided no more than that the company were rateable merely as occupiers of lands in Findern, and did not recognize the principle to have been carried farther by *Rex v. Milton*. It was observed, that this was the first time since canals had been established in this country, that any attempt had been made to rate them as so much land covered with water. *Per Curiam*. Is not that the only correct mode of rating them, according to the statute which imposes the rate upon "every occupier of lands." Unless they are rated in this form, they cannot be rated at all. The cases which have been decided establish this principle, namely, that the occupier of lands in every parish is liable to be rated in respect of the land which he occupies in each; and if a canal passes through several parishes, the undertakers are rateable in each and every parish through which the canal passes, according to the quantity of land occupied. The Trent and Mersey Canal Company occupy the land which the water covers in the township of Findern, and are rateable in respect of such occupation.

Rex v. Kingswinford, 7 B. & C. 237. The proprietors of the Dudley Canal Navigation appealed against a rate made in the parish of Kingswinford, whereby the company were rated at 25*l.* 3*s.* 4*d.* The land occupied by the canal in this parish was twelve acres, two roods, thirty-six perches, and is one twelfth part of the land occupied by the company for the whole canal, which extends through seven parishes. The total amount of tonnage received by the company for the last year on the whole canal, after deducting expenses, is 5670*l.* 13*s.* 1*d.*, one-twelfth part of which is 472*l.* 11*s.* 1*d.* and the rate thereon 9*l.* 16*s.* 11*d.*, to which amount the sessions reduced the rate. The tonnage received during the same period for goods carried on that part of the canal which is situate in Kingswinford, after deducting expenses, is 1208*l.* 4*s.* 4*d.*, and the rate on that sum was 25*l.* 3*s.* 4*d.* Bailey, J. "It seems to me that in amending this rate the sessions have not adopted the correct rule. The canal company are to be rated under the 43 Eliz., as occupiers of land in Kingswinford. Tolls *eo nomine* are not rateable, but if the subject-matter out of which the toll arises be one mentioned in the statute, as the object of a rate, then that may be rated by name, and the tolls which constitute its profit may be thus made to contribute to the relief of the poor. A canal company therefore is rateable in respect of the land which they occupy in every parish through which the canal passes, and for that value which the land there produces. When there is a long line of canal extending through different parishes, although the money collected for tonnage in all the parishes constitute one common fund out of which all the expenses are to be borne, still the proportion which those expenses may bear to the tolls collected, even in cases where the rates are the same along the whole line, may vary in different parishes. The traffic on the canal may be greater in some parishes than others, or the rates may be unequal, and thus the net profits, which constitute the value of the land used for the canal, may vary in different parishes. There are twelve miles in length of the canal in this parish. Assuming that the different branches of the canal had been made under (a) one act of parliament, I am of opinion that the company ought to be rated in each particular parish in proportion to the profit which

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A canal company is rateable in each parish for the profits earned in each, and not upon the entire profits divided by the length of the canal in each parish.

(a) The question raised for the opinion of the court in this case was, whether those parts of the canal which were formed under several statutes were to be considered as a joint concern with another part constructed under 16 Geo. III.

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they derive from the land there used by them for the purposes of the canal. If a canal run through six different parishes, and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls. But it may happen that in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in that other parish from the use of the land there. The true principle is this: a canal company is to contribute to the relief of the poor in each parish through which the canal passes, in proportion to the profit which they derive from the use of the land in that parish. If the profit arising from a given quantity of land vary in different parishes, the rate must vary in the same proportion. The whole rate will be payable out of the common fund. But then each parish will receive from the company a sum in proportion to what the land produces in each parish. If in this instance this rule has the effect of making the rate in Kingswinford higher, it will also make the rate in other parishes lower. For these reasons it appears to me that the sessions have not proceeded on the correct principle, but that they ought to have rated the company for the tonnage received on that part of the canal which is in Kingswinford, and the rate ought therefore to be amended by making it 25*l.* 3*s.* 4*d.*" *Holroyd, J., and Littledale, J., concurred.*

Rex v. Monmouthshire Canal Navigation Company, 5 N. & M. 68. By a local act for making a canal, it is enacted that the rates, tolls, and duties, authorized to be taken by the company of proprietors, shall not at any time or times hereafter be charged with, or be subject or liable to, the payment of any parochial rates whatsoever, and that the company "shall from time to time be rated to all parochial rates, for and in respect of the *lands and grounds* to be purchased or taken, and the warehouses and other buildings to be erected or set up by the said company or their successors, in pursuance of this act, in such and the same proportion as, but not at any higher value or improved rent than, *other lands, grounds, and buildings, lying near or adjacent thereto, are or shall for the time being be rated,* and as the lands, grounds, warehouses, and other hereditaments, so to be purchased and taken and erected, would have been rateable, in case the same had *continued in their former state,* and not been used for the purpose of the said navigation or undertaking." Lord Denman, C. J. "I think that there can be no substantial doubt on the first point. The exemption is incorporated in the subsequent acts. This is manifestly distinguishable from the case cited. The next question is as to the construction of the 101st clause, upon which it is contended on the part of the appellants that they are only liable to be rated according to the value of the lands when taken,—that is, that, for all time, the company are only to be rated according to the actual amount, and in proportion to the value of the lands at the time when they were taken. If that had been the intention of the legislature, it would have been better to have put a certain estimate on the lands. It would have been easy to have said that the land shall hereafter be rated at so much per acre. It would be exceedingly difficult at the present time to determine what was the value of the neighbouring lands at the period when the canal was formed. But it is said that the words are clear and explicit on this subject. If they are so, they are, in my opinion, clear and explicit the other way, because the clause provides that the lands to be taken shall be rated 'in such and the same proportion as (but not at any higher value or improved rent than) other lands, grounds, and buildings, lying near or adjacent thereto, *are or shall for the time being be rated.*' Two periods are here contemplated during which the lands and buildings shall be rated; not only the time of the passing of the act, but also all future time. The standard of rating being the *fluctuating* value with reference to the adjacent lands, how can it be contended that *these* lands are to be rated according to the value when they were taken? The clause proceeds,—'and as the lands, buildings, &c. so to be purchased and taken and erected, would have been rateable in case the same had continued in their former state, and not been used for the purposes of the said navigation or undertaking.' It does not say that they shall only be so rated as if the undertaking had never been carried

into effect. It is impossible to give effect to the whole of the words, but it is extremely easy to see what the legislature intended, namely, that the company should pay the same rates as a similar description of lands would have paid if those lands had never been taken for the canal. Mr. Greaves has with great ingenuity and industry referred to many cases to show that the time when the lands were taken is the time to look at. But if we attend to the object of those cases, that will appear not to be a fair construction. The court were not considering the question which we are now considering, but only the question of *rateability*; and though they say that the lands should be liable to be rated only according to their value when taken, that language is to be applied to the liability and not to the rating. The rate is to be according to the value from time to time. The language of the judges is, however, certainly open to the construction contended for. The third point is, that at all events the canal company were only liable to be rated in proportion to such value as the adjacent lands would now possess, supposing the canal and railways had not been made, but the adjacent lands had continued in their former state, and were now used for the same purposes as they were at the time when the lands were taken by the company; and that any increase of value, arising from or depending upon the existence of the canal or railways, ought not to be taken into consideration in ascertaining the value of the adjacent lands for the purpose of fixing the sum at which the canal company ought to be rated. The words of the clause are not such as these, and do not carry that import with them. The term used in the clause is not 'rated,' but 'rateable,' that is, *liable* to be rated. The company are liable to be rated according to the increase or diminution of value of the adjacent lands. That being so, the question is, whether we are authorized to introduce this condition, that they are only to be rated according to the value of the adjacent lands, such value not arising from the canal. Those are not the words in the act, and there is no reason why they should be inserted. If they were so inserted, the parish and the owners of neighbouring lands would be losers. On the first point the appellants are right; on the two latter the sessions have decided quite correctly." *Littledale, J.*, "With regard to the first point I have no doubt whatever. I do not think it necessary to point out what the effective words of the incorporating clauses are; they seem to me complete to all possible purposes to incorporate the clause. Allusion has been made to a case. That was a very difficult case:—A power was given to make cuts communicating with the canal under particular circumstances; the line of the canal was to be extended, and the question was, whether those powers were to be extended to the new canal. The second point is, that the company were only liable to be rated in proportion to the actual value of the adjacent lands at the time when the lands which they now occupy were originally taken by them; I have not the slightest doubt as to this. The 101st section says, first, that the tolls are to be free from rates; then that the company shall be rated to all parochial rates in respect of the lands to be taken and the buildings to be erected, in such and the same proportion as (but not at any higher value than) lands and buildings adjacent thereto are rated. If this clause had stopped at these words 'are rated,' some doubt might have been raised, whether they were not to be rated according to the value when the lands were taken. But I do not think that even in such a case it is clear that would be so. The words 'are rated' are however followed by the words 'or shall for the time being be rated.' That refers not only to present but future time. The rate must go on from time to time. It is now upwards of forty years since the act passed. I do not see how it is possible to ascertain what the value of the land was when the act passed. I am very clearly of opinion that the true construction is, that you are to take the fluctuating value. With regard to the third question, there is more difficulty. The case states that the value of the property has increased by a variety of means and circumstances. It is contended by the appellants, that the increased value of the adjacent lands is only to be taken *from other circumstances*, and that the increase of value *from the canal* ought not to be taken into account. There is some doubt from the words, 'and as the lands so to be taken and purchased would have been rateable in case the same had continued in their former state,' It

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is said that the meaning of these words is, that the improved value of the lands, supposing that the canal had not been made, is to be taken. That appears to me not to be their meaning. The increased value of the lands is, in my opinion, to be taken—from whatever cause it arises. At the time of passing this act some doubt existed as to whether tolls were rateable *per se*. The act clearly intended to exempt tolls at all events, and the framers of the act may have thought that though they had exempted the tolls, yet if they had said nothing as to the lands, a doubt might have arisen as to whether those lands, as increased by the value of the tolls, might not be rateable; or whether, if a toll-house were erected on the land, the rate might not be increased on account of the value of the tolls received. The meaning of the latter part of the act is, that the land shall be rateable *as mere land*. The company have taken so many acres of land, and are to be exempt altogether from the payment of rates on the tolls; but the lands they possess are to be rated at the value of the adjacent lands. There is, however, great doubt (arising from the inaccurate wording of the clause,) as to how the value of the adjacent land is to be estimated. Is the value of the adjacent lands to be taken *without* the addition made by means of the canal, or *with* the addition? How are the adjacent lands now increased in value? From two causes; by means of the canal, and by means of other circumstances. The meaning of the clause, I think, is, that the value, as it is *altogether*, is to be taken. I do not see how it is possible to ascertain how much the value has increased from one, and how much from the other cause. The proper mode of rating the canal is upon the supposition, that instead of the canal being made where it is, it was 100 yards off, and the present value of the land 100 yards off is to be taken as the value of the land upon which the canal is situated." *Patteson, J.* "On the first point I am with the appellants. The precise ground on which the case cited was decided is not known. There is this distinction between that and the present case, that there the question arose on the 128th section, and the court thought that the incorporating clause in the act of 42 Geo. III. did not extend to *that* clause. I do not see exactly the reason for the decision, but it is enough to say that the two cases are not alike. With regard to the other points, I cannot make sense altogether of the clause, though, upon the whole, it is more nearly intelligible than those clauses generally are. The intention and object of the act was, that the company should not be rated in respect of the tolls. The discussion in all the cases cited by Mr. Greaves was, whether the premises were to be rated, taking into consideration the value of the tolls. Mr. Greaves has argued upon the difference in the forms of expression used in different parts of this clause; first, there is 'at any time or times hereafter,' then 'from time to time,' and presently for the 'time being.' But what can this last expression by possibility mean, as it is here used, but the same as 'from time to time?' The enactment is, that the lands, warehouses, and other buildings *to be* erected, (not *now* erected,) are to be rated as other lands, grounds, warehouses, and buildings, *are or shall for the time being* be rated. If the clause had stopped there, no doubt could have existed but that the company were to be rated in the same way as if the lands and warehouses were in the hands of any private person; but it goes on to say, 'and as the lands and grounds, warehouses and buildings, would have been rateable if they had continued in their former state.' That is impossible, because the *warehouses to be* erected cannot be rated in the same way as if they had continued in their former state, for they had no former state, and had not been used before. They are rateable in the same manner as other land, that is to say, as if they were not in the hands of the company. That is the real meaning of the act. To the third question the answer has been given,—that the thing is impossible. No person can possibly tell what is the value of the lands without including the value arising from the canal. The legislature cannot have intended what was impossible." *Williams, J.* "Upon the question of incorporation I am entirely of the same opinion. No doubt whatever can be entertained. All the words that can be introduced are to be found in the clause in question. Nor is there more doubt on the second point. Mr. Greaves very properly brought under the consideration of the court the several cases that have been

decided, for the purpose of inducing us to suppose that the period to be looked at, is the period of the formation of the canal or of the taking of the lands. Those cases depended upon the language of each act. This particular one must depend on, and be regulated by, the language in the particular statute itself. Upon that, it is impossible to suppose that the time of making the canal is the point of time to which we are to look to ascertain the amount of assessment. The property is to be rated from time to time according to the fluctuating value of the adjacent lands. With regard to the third point, almost all the observations as to the second apply, with this, that it introduces another subject more intractable and more impossible, namely, the extinction of the canal by supposition—a state of things I do not know how we are to deal with. The result is, that as to the second and third points we are against the appellants, and therefore the rate is to remain confirmed.” Rate confirmed.

Rex v. Oxford Canal Company, 10 B. & C. 163. The proprietors of the Oxford canal were empowered to take a mileage tonnage for coals and other merchandizes, excepting that they were not to take a tonnage upon coals for two miles measured from L. to B. As to those two miles, the proprietors of the Coventry canal should take all the rates and duties payable by virtue of that act for all coals carried from any part of the Oxford canal within those two miles; and the proprietors of the Oxford canal were to take all the rates payable by an act for making the Coventry canal, for all goods, except coals, conveyed upon any part of the Oxford canal, and afterwards upon the Coventry canal, within three miles and a half of the junction of the two canals. The point of junction of the Oxford and Coventry canals was in the parish of F. That parish contains one mile and nine hundred and sixty-three yards of the Oxford canal, being part of the two miles above-mentioned, and also two miles and a quarter of the Coventry canal, being part of the three miles and a half above-mentioned. By the 33 Geo. III. c. 80, for making the Grand Junction Canal (which it was apprehended would be injurious to the Oxford canal), it was agreed that compensation should be made to them. It then authorized the proprietors of the Oxford canal to take, for all coals that should pass from the Oxford canal into and upon the Grand Junction canal, 2s. 9d. per ton, without regard to the distance the same should pass on the Oxford canal; and for all other goods which should pass from any navigable canal into or upon the Oxford canal, and from thence into or upon the Grand Junction canal, or from the Grand Junction canal into or upon the Oxford canal, and from thence into or upon any other canal, 4s. 4d. per ton, without any regard to the distance the same should pass on the Oxford canal. *Cur. adv. vult.* Bailey, J. after observing on the 33 Geo. III. c. 80, added “the question is not for what injury the right to receive the new tonnage dues is given as a compensation, or in other words, for what reason the legislature have given that right to the Oxford Canal Company; but what is the legal liability of the company in respect of these dues, when received by them, to contribute to the poor rates. The company are rateable in each parish for the net annual profit of the portion of the canal lying in that parish; in other words, for what the canal in each parish earns, and the tonnage dues are paid by the owners of goods *for passing along the canal*, and are received by the company *for the use of it*, though the reason of being enabled to receive them by the legislature was, that their canal was likely to be injured by the new navigation. It is on the ground that these dues are received *for the use of the canal*, and are earned by the canal, that the company were held rateable for them in *Rex v. Oxford Canal Company* (4 B. & C. 74.) For the passage of coals therefore along the part of the canal lying in Foleshill, some part of the new dues is received by the company, and in respect of that part the rate is proper. It is true that the consequence is, that for coals passing along that part of the canal, being within two miles from the junction with the Coventry canal, the company would receive more dues, and therefore be rateable for more than those which pass along other parts; for they would receive for such coals the proportion of compensation dues above mentioned *directly*, and indirectly a part of the tonnage duties on other goods on the first three miles and a quarter of the Coventry canal, for which it is admitted

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Corporation of Bath erected reservoirs of water in the parish of A., from which, by pipes, they supplied with water the inhabitants of the parishes of A. and B. : Held rateable in A. for so much of the profit from these reservoirs as they made in A., but not for the entire profits made in A. and B.

Inhabitants means residents.

by their counsel that they were properly rated in the rate in question. This consequence however can make no difference in the construction of the act of parliament, which makes the dues payable by the public to the company for passing along their canal, and which therefore constitute a part of the profits of the portion of the canal through which they pass. The canal earns no part of the original tonnage upon coals carried through the two miles of Foleshill into the Coventry canal, because it receives its equivalent by the tonnage upon other goods for the first three miles and a half upon the Coventry canal; but those two miles contribute to earn the compensation tonnage, and for that there is no equivalent. The rate is therefore to be confirmed in this respect; but the case must be remitted to the sessions to make the several deductions to which the company were held in the argument to be entitled."

Rex v. The Mayor of Bath, 14 East, 609. By a rate for the parish of Lyncomb and Widcomb, the corporation of Bath were rated as occupiers of certain springs and reservoirs, at 22*l.* 10*s.* An act, 6 Geo. III. c. 70, for supplying the inhabitants of the city with water, gave the corporation full power to cause water to be conveyed to the city from springs belonging to the corporation; and to break up any public way and any street to drain and collect the water of the springs, and to make reservoirs and engines necessary for distributing such water, &c., and to lay under ground pipes for the same purpose. The act vests the property of all watercourses leading from the springs to the city, and of all reservoirs, pipes, &c. used for the purpose aforesaid, in the mayor, &c. The corporation made several reservoirs in the parish of Lyncomb and Widcomb, where the springs are situated, no part of the city, &c. lying in the said parish. The reservoirs are walled in and roofed; pipes were also laid under ground for conveying the water, which first pass through a part of Lyncomb and Widcomb called Holloway, and from thence along the Old Bridge, over the river Avon, through the parishes of St. James and of St. Peter and St. Paul, which two parishes are within the city. All the water flowing from the springs is collected into the reservoirs, from each of which it is distributed by a main pipe and cock, under the charge of an officer of the corporation, who has no residence upon the spot, but goes there to turn the cocks and distribute the water; and from the main pipes it is distributed by smaller pipes to the houses of the inhabitants, both in Holloway and in St. James and St. Peter and St. Paul. The occupiers of the several houses pay a rate to the corporation for the water with which they are respectively supplied, and the amount of this rate is in the discretion of the corporation. The corporation has been in the occupation of the springs and reservoirs, and of the land included within the walls thereof. The annual profits arising to the corporation from the water thus distributed from these springs and reservoirs, amount to 600*l.* in the whole, of which 50*l.* are collected from the occupiers of houses in Holloway, and 550*l.* from the occupiers of houses in St. James and St. Peter and St. Paul; the 600*l.* is paid at the office of the chamberlain of the corporation. The 22*l.* 10*s.* for which the springs and reservoirs are rated, is upon the whole sum of 600*l.* The lands in which the springs and reservoirs are situated are rated separately in the names of the respective occupiers, exclusive of the springs and reservoirs, and the land thereof. The questions were, 1st, whether the corporation are liable to be rated at all in respect of the said springs and reservoirs in Lyncomb and Widcomb: and 2dly, whether they were to be rated to Lyncomb and Widcomb upon the whole of the profits of the water which flows from the springs and reservoirs, or only upon so much of those profits as are collected from the occupiers of houses within the said parish. Lord *Ellenborough*, C. J. "The mayor, &c. of Bath must be rated under the 43 Eliz. if at all, for the description of property within mentioned, either in the character of inhabitants of the parish of Lyncomb and Widcomb, or as the occupiers of some of the different kinds of property particularly specified in the act as the subjects of the rate. Under various and late decisions, and particularly that of *The King v. Nicholson*, it has been established as the sound construction of the 43 Eliz. that the word *inhabitants* in that act is only satisfied by a residence within the parish. And as there is no doubt that the corporation of Bath are not residents, they cannot be charged *eo nomine* as *inhabitants* in this case; and

therefore if rateable at all, must be rated as the *occupiers* of some of the several descriptions of property enumerated in the act. That they are *occupiers* of the *reservoirs* which they are empowered to make, and in which the water which they are also authorized to collect, is kept, and that such *reservoirs* and *water kept therein* are comprehended within the legal description of *land* (one of the descriptions of rateable property mentioned in the stat. 43 Eliz.), will not admit of a doubt. This disposes of the first question submitted to our opinion. As to the second question, whether the corporation is liable to be rated in this parish for the *whole* of the profits of the water which flows from the springs and reservoirs, or only for the profits collected in this particular parish; it should seem to follow as a consequence from what has been said already, that if the corporation of Bath be occupiers of any local visible property producing profit in any other parish, and falling by reasonable construction within the same description of property as the reservoirs already mentioned, they should be liable in like manner to be rated for it *pro tanto* in such other parish. As so large a portion of the apparatus, by the aid of which the water is conveyed along the two several parishes in Bath, and the soil itself within these parishes on which these pipes rest, and on which soil the corporation are certainly, under the powers of this special act, authorized to lay them, must be considered as mainly conducive to the acquiring the water rent which in so large a proportion (namely, eleven to one, or 550*l.* out of 600*l.*) is received for the use of it in the two Bath parishes, it is impossible to say that the corporation ought to be rated as they are, that is, for the whole of such profits in the parish of Lyncomb and Widcomb alone. A great deal of stress has been laid on the supposed authority of *Atkins v. Davis*, *Cald.* 313; but as the judges of K. B. were equally divided, no decision which can be relied on as authority was come to in this court. And although it may be collected from Lord Loughborough's judgment in the Exchequer Chamber, that he thought that 'the *proper place* where the value of the whole is to be taken is the *fountain head* from which the whole is to be distributed,' thereby intimating two things, 1st, that the whole profit should be assessed at *one place*; and 2dly, that such one place should be the *fountain head*; yet he adds, 'however it is not very material to consider that, for upon the present action it is certainly sufficient to warrant the levying the distress that here was a foundation to make a rate and *some property* rateable.' And indeed upon that ground, viz. of the form of the action which assumed the distress to be illegal *in toto*, and upon the difference which is to be found in the language of the statutes 27 & 43 Eliz., did the united judgment of the Court of Exchequer Chamber proceed, and not upon the supposed rateability of the whole profits at the fountain head. In order to decide the questions reserved for our determination upon this case, it is by no means necessary or proper for us to pronounce in what parishes besides that of Lyncomb and Widcomb, and in what proportions the corporation shall be in future charged. Indeed we have no adequate materials before us for such a decision. It is enough upon the present occasion to state that the rate in question by which the corporation has been charged for the *whole* of their profits in that *one* parish, is on that account bad, and must be quashed."

10. *Where Property to be rated.*

Rex v. Rebowe, 1 *Bott*, 166. Two light-houses were erected at Harwich, by Sir I. R. by virtue of a patent; for the maintenance thereof certain tolls were payable by all ships coming into or passing by the harbour. Part of these tolls were collected by the defendant at Harwich, and the remainder on other parts of the kingdom. He did not reside in the parish, and was no occupier there, excepting by having two persons who lodged in one of the light-houses to take care of them. He was rated to the light-houses. The court decided that the tolls were not rateable there, not being locally situated in the parish. According to what was stated in argument in *Rex v. Cardington*, the ground of decision was, that the vessels did *not* come within the parish, and therefore the tolls were *not due there*. Note. In a MS. note of this case in the possession of Mr. Douglas, it is expressly stated that the court observed that it was not set forth in the case that Rebowe was rated *for the house*, but only for the tolls. *Dougl.* 118, n.

Lighthouses.
The tolls of a lighthouse, where rateable.

10. *Where Property to be rated.*

The owner of a lighthouse is not rateable for tolls not received there, nor taken for vessels passing in the respondent parish.

Where a person resides as a servant, he is not rateable.

Rex v. Tynemouth, 12 East, 46. There were two points in this case, 1st, whether R. W. be rateable for two rooms in Tynemouth light-house: 2d, whether Mr. Fowke be rateable for the tolls in respect of the light-house. By letters patent of the 17 Car. II., and by the statute 42 Geo. III., Mr. F. is entitled to Tynemouth light-house, and certain tolls payable in respect of the same, for every ship passing by the light-house, and belonging or trading to the ports of Newcastle or Sunderland; and for certain tolls from every ship belonging to any foreigner passing by the light-house. The light-house is in parish of Tynemouth, the tolls are payable upon ships sailing on the German ocean, and benefited by it. They never come within the township of Tynemouth, and neither Mr. F. nor any of the receivers of the tolls reside in Tynemouth, and the tolls are collected out of it. R. W. is a servant of Mr. F. at an annual salary, and resides within the walls of the light-house, to take care of the light-house; and is rated for these two rooms, as occupier, at 6*l.*: and Mr. F. is rated for the tolls in respect of the light-house. Lord Ellenborough, C. J. "It is no question now whether this property could be rated in some other way; as if the light-house, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent; but this is a rate specially upon the tolls, and therefore the case is not distinguishable from *Rex v. Rebowe* (*supra*), which is so immediately *in specie*, and in all its circumstances the same, and has been so long considered and acted upon as law, that it concludes the question. What local property is there within the township on which this rate or the tolls can be levied? The tolls are not received there; nor do the ships from which they are collected come within the township; the subject-matter of the rate has no locality within this township. As to the other point, it is equally clear that it is the occupation of the master by his servant, and not the occupation of the servant himself, and therefore the rate on the servant is bad on that ground." Mr. Fowke was subsequently rated, as occupier of the light-house, 500*l.* The case stated that if the light-house should be let, together with the tolls, it would be worth 500*l.* a year to be rented by a third person; but, if let without the tolls, it would be worth 6*l.* a year only. There were also these facts added, that about a thirty-eighth part of the entire number of vessels paying tolls come within the township of Tynemouth, and receive their loading there. The tolls received in respect of such last-mentioned vessels, do not equal in amount the expense of maintaining the light and managing the light-house; the whole of which expenses are incurred within the township of Tynemouth. No tolls from any ships whatever are received in the township of Tynemouth, nor do any of the collectors thereof, or Mr. Fowke, reside in that township. It was contended, that by the letters patent and the act of parliament, the privilege of having the light was connected with the light-house itself, and that therefore the whole was rateable. Bayley, J. "The tolls do not arise from the building, nor from any thing of necessity connected with it, and this case therefore is not distinguishable from that of *Rex v. Coke* (*infra*). Here the act of parliament declares the light-house to be a public benefit, and it ought not to be burthened with an additional charge." The order of sessions was quashed, and the sessions were directed to amend and alter the rate by reducing the charge made and assessed to 6*l.* (*Rex v. W. Fowke*, 5 B. & C. 814.)

Rex v. Coke, 5 B. & C. 797; 8 D. & R. 666. A Mr. Coke was rated as the occupier of a "light-house, together with the duties and contribution money payable in respect of ships passing by the same, the annual value of the same being stated to be 2250*l.* over and above the expense of keeping up the light-house and lights. The light-house was situated in the parish, and occupied by a servant of the owner, but the duties were collected out of the parish. Held that these duties did not constitute part of the annual profits of the house or land where the light was placed, and were not rateable. Bayley, J. "It seems to me that this house is rateable, but that the rate to the extent to which the parties are desirous of carrying it cannot be supported. The rate is upon the light-house, with the duties or contribution money, in respect of ships, hoys, and barks passing by the same. To make the defendant rateable to the full extent of 2000*l.* a year, it must be shown

that he comes within the words of the stat. 43 Eliz., and is the occupier of a house or land of that annual value. The authorities cited in the course of the argument are distinguishable from the present case, except the two cases, *Rex v. Rebowe* (*ante*, 201), and *Rex v. Tynemouth* (*ante*, 202), where it was expressly decided that the tolls of a light-house were not rateable. A considerable interval of time elapsed between the decisions in those cases. And where there has been one uniform course of proceeding as to property of this description for a very considerable period of time, we ought not to introduce any alteration unless it be founded upon sound legal principles. The privilege of erecting light-houses was, I apprehend, originally in the crown. I believe it was afterwards vested in the Trinity House. The tolls are contributed by the proprietors of ships; and if the sums of money which they from time to time pay be properly apportioned, they will contribute a sum sufficient to remunerate the proprietor for the expense of keeping up the light-house, and to leave a moderate and reasonable profit for the trouble of renewing the light. If the proprietor of the light-house be rateable to the poor, the contribution which he will expect from the proprietors of ships must be proportionally larger, and they, in reality, will pay the rate, which will therefore become a burthen upon commerce." The learned judge, after commenting on several cases, added "*Rex v. The New River Company* does not bear upon the present case, because the proprietor of the light-house in this case is at liberty either in that house or in any other which he may think fit to erect or to rent, to burn lamps, and to produce a stream of light which shall be visible at a considerable distance at sea. But even if by the terms of the letters patent it were imperative on the grantee to burn his lights within this particular light-house, still if the privilege is not given to him by reason of his being the occupier of that house, it would not be appurtenant to but distinct from the house where it was to be exercised; and the duties payable to him in respect of the light, would be profits arising from the exercise of that privilege, and not from the house or land where it happens to be exercised. The grantee would in that case have an exclusive privilege of carrying on in that particular house (if I may so express myself) a particular description of trade. But there would be no necessary connection between the freehold interest in that house and the light which is to be kept up in it. The apparatus which is to contain or produce the light may or may not be attached to the freehold, and if it were wholly unconnected with the freehold, it might produce all the effect which is produced in a light-house. Suppose that effect were produced by hanging up a quantity of lighted coals with a reflector behind them, any sums payable by the owners of ships for the benefit which they might by possibility derive from that fire, would not constitute any part of the profit of the house or land where the lighted coals or reflector happened to be placed, but would be profits arising from the privilege. Then as all the purposes contemplated by the grant may be attained by forming the apparatus to produce the light in such a way as not to be connected with the building, and in that case the tolls payable by the ships would not constitute any part of the profits of the land, and would not therefore be rateable; it seems to follow, that the exclusive privilege of having the lights, even if the grant required them to be placed in a particular house, is distinct from that house or building, and the duties and contributions are profits arising from the exercise of the privilege, and not from the house or land where it is exercised, and those profits are not rateable as constituting part of the value of that house or land. And if it be once ascertained that the tolls and duties, quâ tolls and duties, are not rateable, then, although the business must be carried on in a house, or even in this specific house, a distinction must be taken between the value of the house in which that particular trade (for I consider it a species of trade) is carried on, and the profit arising from the trade itself. Now here the nature of the trade is that the proprietor of the light-house is to keep certain lights burning. Those lights are not of necessity attached to the freehold, and if they are not attached to the freehold they would be personal property. The proprietor of the light-house does no more than keep a candle or a fire lighted, and for keeping his lights, whether produced by candle, or by burning coals, or by oil, and for keeping mirrors

10. *Where
Property to be
rated.*

behind those lights, the tolls and duties which are the subject of the rate are imposed. Such tolls down to the present time never have been rated, and in my opinion they are not rateable." Per *Holroyd, J.* "In this case the profits of the light-house arise from the tolls, and I think, according to the two cases (*Rex v. Rebowe* and *Rex v. Tynemouth*), we must decide that the tolls not being received and having no locality in the parish of Lydd, are not rateable. Here the benefit for which the tolls are paid (which is an incorporeal hereditament) is not one of the things mentioned in the 43 Eliz., for it constitutes a benefit not received within the parish, but received by ships elsewhere, or not received at all if they pass in the day-time when no light is burning." Per *Littledale, J.* "To make tolls rateable, there must not only be a profit produced within the parish, but it must also arise from the use of the thing, and in respect of it. Here the ships have not that sort of use; they have merely a transient view of the light as they pass. They do not come within the light-house as they do within a dock: in that case they have the actual use and occupation of the dock. They not only do not come near the thing itself, which is the subject of profit, but they do not come within the parish. This is distinguishable from all the other cases where the tolls themselves have arisen in respect not only of what was produced in the parish, but from the actual use of the thing which was the subject of the rate." It was ordered that the rate be amended by striking out 2250*l.*, and inserting 4*l.*, the annual value of the house.

*Ships and Vessels
where to be rated.*

Rex v. Shepherd, 1 B. & Ald. 109. This was an appeal against a rate for the parish of St. Peter, Wisbech, whereby the defendant was rated for the profits of the sloop John, and one Patrick for the sloop Nene. The harbour of Wisbech is several miles up the river, but the water is so shallow that small vessels only can get up into the parish of St. Peter's. Part of the port is not in any parish. The John, being too large to get up to the parish, was never within any part of it. Her usual birth was in the port, but not in the parish. "John of Wisbech" was painted on her stern. The cargoes were usually unshipped into smaller vessels, which had their home in St. Peter's, and were included in the rate. The owners and master resided in St. Peter's, and carried on their business there. The sloop is registered there, and has her entries and clearances made there. The freight is generally paid, and the contracts made at the place of business. The sloop Nene usually receives and delivers her cargo in the parish, where her voyage terminates, but occasionally delivers them out of the parish. When unemployed, her home is in the parish, where her owner and master resides and carries on his business. She is registered there, and her name on the stern is "The Nene of Wisbech." At the time of the rate she was not in the parish. Lord *Ellenborough, C. J.* "As the ship John was never within the parish, I cannot consider the rule by which the court has abided in all cases, viz. that the property should be locally within the parish, as attaching upon her. That vessel has never been locally or visibly within the parish, and therefore I do not consider her as rateable. As to the Nene, she is said to have been out of the parish at the time when the rate was made; but I cannot say that we are to measure by a stop-watch the precise position of a ship (which is in its nature a machine of passage) at the time when the rate was made. If such strictness were required, it would be almost impossible to make a ship the subject of a rate. It appears to me to be sufficient to answer the purpose of the poor laws, that the parish in which the ship is rated is the domicile of the vessel, and that the profits derived from it contribute to the ability of the occupier within the parish. In all cases the profit is earned, as to the bulk, out of the place. This vessel, as far as can be predicated of such a thing, yields a profit so as to answer the description of local and visible property within the parish. It need not be ascertained with precise exactness where the ship was at the time of the rate, in order to give validity to the rate; this parish was generally her home, and the vessel so far resided there that it could not be predicated of it, that it resided elsewhere; therefore it must be rated within that parish; it can be rated no where else. It seems to me therefore that the Nene was well rated in the parish of St. Peter's." *Bayley, J.*

"I think that the Nene was well rated in the parish of St. Peter's; it has been decided over and over again, and too often for us to disturb it now, that if property can be shown to be available property in the parish where the owner resides, he must be rated there in respect of such property. It is found in this case that the owner of this vessel was an inhabitant of the parish, and also that the ship's port was within this parish: she usually received and delivered her cargo there: then, if I may use the expression, where was the property domiciled? Locally within the parish of St. Peter's. It has been said that the ship might be lost at the time when the rate was imposed: but it must be recollected that the rate is made in respect of by-gone profits, already earned at that time, and therefore the loss of the ship could not interfere with the right of the parish to receive this rate in respect of profits antecedently received." *Abbott, J.* "I think the owner of the ship John was not rateable in respect of that vessel, inasmuch as she was never within the limits of the parish; the rule being, that the property rated must be visible property within the parish. If the court were to depart from this rule, I think it would create great uncertainty and confusion in this branch of the law. As to the Nene, I think the owner was rateable in respect of that vessel, as St. Peter's was the parish where her cargo was usually received and delivered, and which, when unemployed, was her home. Being a coasting vessel, she would necessarily be often absent, but in the course of that employment she would often return to the parish: it may therefore fairly be said that this parish was her home, just as the dwelling-house of a person travelling on his necessary business may be said to be his home. Looking then at the general state and condition of this vessel, I think she must be considered as property locally visible within the parish, and that her occasional absence is quite immaterial." *Holroyd, J.* "I am of the same opinion as to both points: as to the Nene, the owner is rated in respect of profits, which had been earned by him, from a vessel, which under the circumstances must be considered as visible property within the parish. In the case of *The King v. Jones*, there was no statement that the ship was in the parish at the time of the rate being imposed; but that circumstance does not, I think, make any difference in this case, inasmuch as St. Peter's was the home of the vessel, and she must be considered as belonging to this parish for the purpose of being rated."

10. *Where Property to be rated.*

Rex v. Sculcoates, 12 *East*, 40. The commissioners of the Beverley drainage were rated for lands and buildings in Sculcoates, purchased by them and converted into a drain. By the 38 Geo. III. c. 63, commissioners were appointed for draining low grounds in certain parishes. For this purpose they purchased the lands and buildings now rated, which were converted into a drain extending from Beverly to Sculcoates, ten miles; *but no part of the lands thereto adjoining are benefited thereby*: previous to the purchase, these lands and buildings had been rated, but since the making of the drain they had not. The proprietors of the low grounds had been benefited by this drainage. Lord *Ellenborough* said he could not find by the act that the commissioners were in the receipt of any fund for their own benefit, or were trustees of any divisible fund in their hands in this parish, for the benefit of others; and certainly not so for their own benefit. That the only persons benefited were the owners of lands benefited by the drainage in other parishes, and in those liable to be rated for the improved value of their premises. *Bayley, J.* asked if there was any beneficial interest derived in this parish from these works. Lord *Ellenborough*. "In all the cases cited, the property rated yielded pecuniary benefit, or that which was capable of being estimated and converted into pecuniary benefit, within the parish, to the parties interested; but here the benefit results to the lands drained, which lie in other parishes, and the property would be liable to a double rate if it were also rateable in the hands of the commissioners. Here is no benefit received by these commissioners for themselves or others within this parish, which is capable of being rated. The benefit is all divided in other parishes. The dock company of Hull were in the receipt of tolls for the benefit of the shareholders in respect of the use of the docks within the parish in which they were rated: but the commissioners are the mere instruments of benefit to land-

Land converted into drainage.

10. *Where Property to be rated.*

owners elsewhere. I know of no instance where a canal company has been held rateable for the mere space occupied by the canal in a particular parish, if no tolls were received or become due there; (a) and I cannot distinguish between land converted into a drainage and a canal." And finally he delivered the opinion of the court, that the commissioners having no beneficial occupation of the property in this parish, either for themselves or others, were not liable to be rated.

On waste lands, formerly fens and marsh, drained, &c.

By 17 Geo. II. c. 37, when waste lands, which were formerly fens and marsh, are drained and improved, and the parish to which they belong cannot be ascertained, the occupier thereof, or of houses built thereon, tenements, tithes arising therefrom, mines therein, and saleable underwoods thereon growing, or hereafter to grow, are to be rated to the parish that lies nearest to such lands; and if any dispute shall arise as to what parish or place they ought to be rated to, the justices in quarter sessions shall, after due notice given to the persons interested, and to the parishes and places abutting and adjoining the said lands, cause them to be assessed as they shall think meet, and their determination and allotment is to be final and conclusive.

11. *Form of Rate, Allowance thereof, and Publication of same.*

11. *Form of Rate, Allowance thereof, and Publication of same.*

It was observed by Willes, J. in *Rex v. Wavell, Dougl.* 116, that the title of a poor rate is in general material, and cannot be rejected as surplusage; as if by its title a rate purport to have been made to raise money to reimburse money borrowed, that defect in the object of the rate will be fatal to its validity. See the usual form of title of rate, *post, Appendix.*

Wherever a union has been established, the poor law commissioners have required that a rate-book should be provided in the following form; and in all cases the rate should specify the name of the occupier, the description of the property, its value, and amount at which it is assessed; and the form may be as below:

RATE BOOK.

Name of Occupier.	No. of Votes.	Name of Owner.	No. of Votes.	Description of Property for which rated.	Name of the House, Lands, or Premises, or situation thereof.	Rental or Annual Value of Property.	Amount at which the Property is Assessed.	Amount of Poor-Rate to be collected at—in the £.	Amount of Arrears of former Rate, if any.	Total Amount to be collected.	Amount actually collected.	Date when so collected.
						£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	
						— — —	— — —	— — —	— — —	— — —	— — —	

CERTIFICATE OF AUDITOR.

I have examined all the items in this account, and compared them with the vouchers, and I do hereby certify and declare that every entry allowed by me is correct, and in strict conformity with the rules, orders, and regulations of the poor law commissioners, and the provisions of 4 & 5 Will. IV. c. 76.

_____. Auditor.

See the usual title and form of rate, *post, Appendix*, and 8 Bar. & Cres. 54.

(a) *Sed quære*: see *Rex v. Oxford Canal Company, ante*, 199.

Rex v. The Undertakers of the Aire and Calder Navigation, 2 B. & C. 713. Upon an appeal against a poor rate, the sessions confirmed the rate, subject to a case, which stated that each occupier was rated thus:—Occupier, *Ashton, Joseph*; Rate, 1*l.* 8*s.* 9*d.*; Assessment, 2*s.* 10*d.* Case:—The property in respect of which the defendants were rated was not particularized or specified. *Abbott, C. J.* "The objection to the form of the rate is decisive. If any person wished to appeal, on the ground that another was underrated, how could he tell in respect of what property the rate was imposed?" Rate quashed. See *post*, *Rex v. Bromyard*.

The description of the property assessed must also be in such terms as to show it was in point of law *prima facie* rateable; and therefore it must not be described as merely *a way* or *an entrance*, &c.

A preceding or even ancient rate may be a good rule for future assessments, but it cannot be confirmed as a standing rate; but to be equal it should be altered as circumstances have altered. *Rex v. Wrexham Regis*, 1 *Bott*, 123.

By 43 Eliz. c. 2, s. 1, they (the overseers), or the greater part of them, shall take order from time to time *by and with the consent of two or more such justices of the peace as is aforesaid*, &c. (See that stat. *ante*, 11.)

And this consent is usually given by the justice signing the rate, with their allowance thereupon thus:

We, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do consent unto and allow of this assessment: witness our hands the *day of* 18

J. P.

K. P.

The allowance of the rate shall be recorded in the rate-book. *Poor Law Commissioners Rules.*

But this consent is to be understood of two justices out of sessions; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal; for in such case the party would be deprived of the benefit of appealing. (2 *Lord Raym.* 798.)

And if the justices refuse to sign and allow the rate, the Court of King's Bench will grant a *mandamus* to compel them; and an attachment if they keep out of the way to avoid the *mandamus*. (*Rex v. Edwards*, 1 *Bla.* 637.)

Rex v. Justices of Dorchester, 1 *Stra.* 393. A *mandamus* issued to the justices to sign a poor rate. Before the return, a motion was made to supersede it for several objections to the fairness of the rate. But by the court: "The two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overseers that have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for examination." The justices returned that they could not allow the rate, it not being a just and proper rate; and the court quashed the return, and ordered an attachment.

Rex v. Uttoxeter, 1 *Bott*, 83. The allowance of the poor rate by two justices is merely a ministerial act. (See also *Rex v. Kynaston*, 1 *East*, 117.)

43 Eliz. c. 2, s. 8, enacts, "that the mayors, bailiffs, or other head officers of every town and place corporate and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this act within the limits of their jurisdictions, as well out of sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there; and that every alderman of the city of London within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm."

Sect. 9 enacts, "that if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town,

11. *Form of Rate, Allowance, &c.*

A poor rate must show upon the face of it in respect of what property the assessment is made upon each individual charged by the rate.

Allowance of the rate by the justices.

Form of allowance.

The sessions have no original power to order an assessment.

The justices cannot refuse signing a poor rate.

The allowance of a rate is a ministerial act.

Officers of corporate towns have the authority of justices of peace.

Aldermen of London.

A parish extending into two counties or into two liberties.

11. *Form of Rate, Allowance, &c.*

or place corporate, and part without, that then the justices of every county, as also the head officers of such city, town, or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any farther, and every of them respectively, within their several jurisdictions, to execute the ordinances before mentioned concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxation unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account or deny to pay the arrearages due upon their accounts; and yet, nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace."

Rate not to be altered after allowance.

After a rate has been allowed, it should not be altered by inserting additional names, although with the magistrate's approbation. (*Rex v. Barrett*, *Doug.* 465.)

Rate for a parish comprehending a borough to be confirmed by a justice of a county and of the borough. (a)

Rex v. Gordon, 1 B. & Ald. 524. Where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a *mandamus* for allowing a poor rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since stat. 43 Eliz. c. 2, of appointing separate churchwardens and overseers, and of making separate rates for the borough and for those parts of the parish which lay without the borough; it was holden that such custom was invalid, and the return was quashed. Lord *Ellenborough*, C. J. "The 9th section of the 43d of Eliz. specifies and enumerates many acts that may be done separately, where a parish is partly within a town corporate, and partly without; but it does not mention the act of making rates. Now this of itself affords a very strong presumption that the legislature contemplated the making of one entire rate for the parish; and, besides, that section, after directing in what way the churchwardens and overseers are to be appointed, enacts expressly that they shall, without dividing themselves, execute their offices in all places within the said parish. That shows distinctly that one rate only for the whole parish must be made, and prohibits the making of separate rates by the separate bodies of churchwardens and overseers, as has been, according to the custom stated in this return, done within this borough. I think this return to the *mandamus* bad.

Only one rate for the whole, though a custom for two.

Distinct rates may now be made where borough and parish have had separate assessments for sixty years.

But by 59 Geo. III. c. 95, (b) separation of towns corporate or franchises from the parish in which they are situate shall be deemed lawful in case it shall appear that such separation has not commenced within sixty years before the passing of that act.

Publication.

By 17 Geo. II. c. 3, s. 1, the churchwardens and overseers, or other persons authorized to take care of the poor, shall give or cause to be given public notice in the church of every rate for relief of the poor allowed by the justices, the next Sunday after such allowance; and no rate shall be esteemed or reputed valid and sufficient so as to collect or raise the same, unless such notice shall have been given.

Want of publication renders the rate invalid.

Rex v. Newcombe, 4 T. R. 368. On a *mandamus* to compel two justices to grant a warrant of distress to levy a poor rate, it appeared that the rate was not published till the *third* Sunday after it was allowed. The rate had been confirmed on appeal. Lord *Kenyon*, "This application is answered by the act of parliament, which requires a particular step to be taken before the rate can be 'valid;' namely, that public notice shall be given of the rate in the church on the next Sunday after it is allowed: that direction was not pursued in this case, and consequently the rate itself is invalid. Suppose the parish officers were to give notice of the rate at some other public place in

(a) The contrary has been held in *Rex v. Folly*, 1 Bott, 86.

(b) See statute, *ante*, p. 19.

the parish, it would not be sufficient, though it might be equally notorious. What is said in *Hutchin v. Chambers* (1 Burr. 579; 2 Ld. Keny. 204), is perfectly right, as applied to the inequality of the rate. But this is a radical defect in the rate itself which nothing can cure." *Buller and Grose, Js.* concurred.

11. *Form of Rate, Allowance, &c.*

In *Bennett v. Edwards* (see post, 210), in giving judgment, *Bayley, J.* observed, "It is said that there was no proper publication in church, because the notice did not state that the rate had been allowed, but merely that it would be collected forthwith. Now the act requires no such publication in words. All that it requires is, 'that the churchwardens and overseers, or other persons authorized to take care of the poor in every parish, township, &c. shall give or cause to be given public notice in church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed; and that no rate shall be reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given.' It does not say that notice shall be given, 'that the rate has been allowed,' but 'of every rate allowed.' This has been done here. It must have been in fact allowed, or the publication would be useless. A notice that a rate is about to be collected *ex necessitate* implies that it has been allowed."

Notice that a rate will be collected is sufficient.

12. *Of Inspection of the Rate, &c.*

12. *Of Inspection of the Rate.*

By 17 Geo. II. c. 3, s. 2, it is enacted, "that the churchwardens and overseers of the poor, or other persons authorized as aforesaid (*i. e.* to take care of the poor) in every parish, township, or place, shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all seasonable times, paying one shilling for the same, and shall upon demand forthwith give copies of the same or any part thereof to any inhabitant of the said parish, township, or place, paying at the rate of 6d. for every twenty-four names."

By s. 3, it is enacted, "that if any churchwarden or overseer of the poor, or other person authorized as aforesaid, shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden or overseer, or other person authorized as aforesaid, for every such offence, shall forfeit and pay to the party aggrieved the sum of 20*l.* to be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, wherein no essoign, protection, or wager of law, or more than one imparlance, shall be allowed."

Penalty for refusal.

Spencely v. Robinson, 3 B. & C. 658; 5 D. & Ryl. 572; 2 D. & Ryl. Mag. Ca. 551. In an action on the statute it appeared that the plaintiff was an inhabitant of Coxwold, and the defendant overseer. The rate in question was published on the 28th of March. About eight o'clock of the 19th of April, the plaintiff sent his son to the defendant, to request that he would come to him at his (plaintiff's) house. The defendant went and saw the plaintiff and his attorney; the plaintiff asked the defendant to allow him to inspect the rate, and tendered him one shilling. The defendant said that he durst not allow it; he was ordered not to do it. The plaintiff's attorney then asked him for a copy of the rate. The defendant then went away and related what had taken place to Mr. *Newton*, a magistrate, and stated that he had not shown the rate, because he was informed that he was not obliged to show it. Mr. *Newton* told him that he was, and pointed out the clause, and advised him to go back immediately and show the plaintiff the rate, and take a copy of it next morning as early as possible to the attorney. The defendant did return to the plaintiff's house, in about two hours after the inspection of the rate had been demanded, and offered to show him the rate, and the defendant made out a copy that night and delivered it to the plaintiff's attorney early the following morning. The latter said that it was too late, for the plaintiff could not appeal to the next sessions. The defendant said that he would waive all objection to the notice. The defendant on the

The demand to inspect the rate must be made at a reasonable time and place by an inhabitant who is aggrieved.

12. *Inspection of the Rate.*

17th of April had met the plaintiff's attorney in Helmsley market, which is about eight miles from Coxwold, and he then asked him if he had a copy of the rate, for he was employed by the plaintiff, and wished to see one. The defendant said that he should have one if he was entitled to it, and the attorney replied that he should be at Coxwold on Monday the 19th, and should expect to have one. Bayley, J. told the jury, that although there was a refusal at one time to permit an inspection of the rate, the question was whether that refusal was not done away with by what subsequently took place. The defendant, within two hours after the refusal, having offered to allow the plaintiff to inspect the rate, and having delivered a copy to the plaintiff's attorney early next morning, a party was bound to give an overseer a reasonable time to do what the law required, and that if the jury thought that the defendant had complied with the demand in a reasonable time, the defendant was entitled to a verdict. The jury found a verdict for the defendant. On a motion for a new trial it was urged, that as permission to inspect the rate had been once refused, a right of action vested in the plaintiff. Abbott, C. J. "My doubt in this case has been not whether the learned judge left the proper question to the jury, but whether he ought to have left any question at all to the jury. I think that the plaintiff ought to have been nonsuited." After reciting sect. 2, he added, "The person, therefore, to whom an inspection is to be allowed, or a copy to be given, must be an inhabitant. The defendant, therefore, was not bound to attend to the request made by the attorney of the plaintiff on the 17th." His lordship here read the next clause, sect. 3, and said, "The latter words plainly import that the penalty is to be given to the person who has sustained an injury by the act of the overseer. Now here the plaintiff sustained no injury, for he was not deprived of his appeal by what took place, as it might have been entered at the next sessions, and the justices had power to adjourn it to a subsequent sessions. The question left to the jury was, whether the defendant had within a reasonable time complied with the request of the plaintiff, to be permitted to inspect the rate, or to have a copy. Before any right of action could vest in the plaintiff, by reason of the defendant's not permitting him to inspect the rate, a request must have been made for such permission at a reasonable time and place. The house of the overseer, where he may be fairly supposed to keep the rate-book, must be the reasonable place for making such a request or demand. Now, in this case, the overseer, without having any notice that the rate-book is required, is desired to come to the plaintiff's house, and the demand to inspect the rate-book is made at a place where it was known he could not have the book with him. That was an unreasonable place for making the request. I think, therefore, that there was, in this case, no legal request or demand to inspect the rate-book. Then, as to the copy of the rate, assuming that the demand of a copy made by the solicitor in the presence of the plaintiff, was a demand by the latter, the defendant was entitled to a reasonable time to comply with that demand. For although the statute requires the overseer to furnish the copy *forthwith*, that word must receive a reasonable construction so as to give the overseer an opportunity of making the copy required. Here the copy was made during the night, and delivered the following morning. That demand was complied with in a reasonable time, and therefore the plaintiff ought to have been nonsuited." Holroyd, J. "I think that the demand to inspect the rate was not sufficient, because it was not made at a reasonable time and place. I think, also, that the plaintiff was not a party grieved, because he did not sustain any injury by the refusal to allow him to inspect the rate. The being an inhabitant does not make him a party grieved. It has been held under the Bankrupt Laws, that unless the party be a creditor, he is not a party grieved, within the meaning of those statutes."

House of overseer the reasonable place.

"Forthwith" means a reasonable time.

Who is a party grieved.

An assistant overseer is not liable to the penalty for not producing the rate, unless by the terms of his appointment it

Bennett v. Edwards, 7 B. & C. 586; 1 M. & R. 482. In a similar action against an assistant overseer, it appeared that the plaintiff and his attorney, *Steele*, required of the defendant to see the rates, but tendered no fee to the defendant for showing them. On a subsequent day they went together to the defendant's house; the defendant met them in the yard, close to the

door. *Steele* said, "It is intimated to Mr. *Bennett* (the plaintiff), that the reason you refused to show the accounts was because the proper fees were not tendered. I hope you will take the money and let us see the rate." The defendant then said, "I cannot; I have the books, but I have orders not to show them;" and a moment afterwards added, "*Bennett* may see them by going to the vestry," (explaining, upon inquiry, that he meant the select vestry, who had consented to meet at short notice, should the plaintiff apply for inspection of the rate and accounts). The plaintiff then tendered 1s. 6d. and said he demanded inspection of the poor rate; and the defendant said he had orders not to show them. A rate was allowed on the 17th May, 1827, and published in church on the 20th, in the form following: "This is to give notice, that a rate or assessment of one shilling in the pound will be collected forthwith." The next preceding rate had been made the 8th December, 1826, and published on the 24th. The action was brought before June 15th, so that no sessions intervened between the time of the refusal and the commencement of the suit. The plaintiff was nonsuited, and on a motion for a new trial, *Bayley, J.* said, "In the course of the argument six questions have been presented, on one only of which we have felt any doubt. First, the presence of the attorney has been made an objection to the mode of making the demand; and it is said, that, not being a parishioner, he and the plaintiff improperly required the defendant to give them inspection. But it appeared that the attorney had explained to the defendant that he asked for inspection on behalf of Mr. *Bennett*, his client, and although by the 17 Geo. II. c. 3, s. 2 and 3, an inhabitant alone is entitled to inspect the rate, yet his attorney, or any other person, may go with him to make the demand; or in case of an improper refusal, how can the demand be proved? Secondly, I think the plaintiff was a party aggrieved. Here the plaintiff had a right to see the rate, in order to satisfy himself whether he was fairly dealt with, and whether other parties were assessed at all, or to the full value, or whether he was overrated; and this inspection was wrongfully denied him.^(a) Fourthly, the objection that there was not a sufficient demand, is answered by the fact that the plaintiff asked for the rate. There was no rate *in esse* at the time of such demand except this, which was published in church on the 20th of May, and demand was made on the 23d. Fifthly, it is said that the refusal was not absolute, because the books were offered to be produced at the vestry. But if a party entrusted with the rate has no right to insist on terms, then a refusal qualified by such terms as he has no right to insist on, is an unlawful refusal; and he thereby commits the offence of not permitting the parishioners to inspect the rate within the words of this act of parliament. The remaining question on which we doubt, is, whether the defendant as assistant overseer be liable within the act of parliament. We all think that this rule ought not to be made absolute for entering a verdict for the plaintiff. For if we decide that an assistant overseer may be liable to the penalty imposed by the 17 Geo. II. c. 3, s. 3, it will still be a question of fact whether the defendant was such an assistant overseer. If it was part of his duty to produce the rate, the plaintiff will be entitled to a verdict. But if that was no part of his duty, there ought to be a nonsuit. Assuming, therefore, that we should be of opinion that an assistant overseer (whose duty it is to produce the rate) is an overseer within the meaning of the 17 Geo. II. c. 3, s. 3, it will still be a question for the jury, whether the defendant was such an overseer." *Holroyd, J.* "The law knows what an overseer is, but it does not know what is an assistant overseer. He may be appointed generally to do all the business of an overseer, as a deputy, or only to keep the accounts, or perform other particular business. If it were his duty to do all the acts which an overseer is bound to do, then he ought to have produced the rate. A jury must decide this by ascertaining the nature of his duty." *C. a. v. Bayley, J.* "The question reserved for our consideration was, whether this action was maintainable against an assistant overseer. The select vestry are to determine and specify the duties to be performed by the assistant overseer. It did not

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was part of his duty to produce the same.

Demand by an attorney in the name and presence of the inhabitant is sufficient.

The rate *in esse* is the last published rate.

A qualified refusal sufficient.

(a) The third question related to the publication of the rate. See *ante*, p. 208.

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If defendant neglect, after notice, to produce his appointment on the trial, his duty may be inferred from his conduct.

The custody of parish books implies a duty to allow inspection.

appear upon the trial what duties the defendant was liable to perform. He may be liable to perform all or only some of the duties of overseer. It must depend on the nature of his appointment, therefore, whether it was part of his duty to exhibit the rate to the plaintiff in this case. There having been no evidence to show that it was his duty, as assistant overseer, to produce the rate, the case must go down to another jury, in order that the nature of his duties may be ascertained." At the second trial, in addition to the former evidence, it appeared that the plaintiff had given the defendant notice to produce his appointment to the office of assistant overseer; but he refused to produce it. *Park, J.* left it to the jury to infer, from the conduct of the defendant when the rate was demanded of him, and from the fact of the non-production of his appointment, that it was part of his duty, as assistant overseer, to produce the rate. The jury found a verdict for the plaintiff on those counts which charged the defendant as assistant overseer. Upon a motion in arrest of judgment (8 B. & C. 702; 2 M. & R. 482), *Bayley, J.* said, "I agree that he is not a person authorized to take care of the poor within the meaning of the statute. Neither is he a churchwarden. Is he then an overseer? Certainly not for all purposes, but for this I think he is. The 59 Geo. III. authorizes the appointment of assistant overseers, and every person so appointed is authorized to execute all such of the duties of overseer as shall in the warrant of his appointment be expressed. And therefore it is not sufficient to aver that the defendant was assistant overseer, but that must be stated which expressly, or by necessary implication, shows that he was an assistant overseer with the duty in question cast upon him. If the duty of keeping the parish books and rates is imposed, I think the consequence follows that he must allow the inspection of them. If this were otherwise, the original overseer, when applied to for permission to inspect, might answer that he had them not: the assistant overseer might say, that it was no part of his duty to exhibit them; and thus the 17 Geo. II. would be inoperative. I am, therefore, of opinion that when the duty of keeping the rate is imposed, the duty of allowing an inspection of it is imposed also." *Littledale, J.* "The duties of an assistant overseer are certainly undefined, nor can we tell correctly what they are without seeing the warrant by which he is appointed. The rate book might be delivered to him for the purpose of collecting the rate only; but then the plaintiff must have been nonsuited. We are, therefore, bound to presume after verdict that the defendant was proved to be such an assistant overseer as made it his duty to produce the rate to the plaintiff, and in general we may presume that when a person has the custody of the parish books, he has them for lawful purposes for which they may be wanted." *Parke, J.* was of opinion that the declaration was sufficient to warrant a judgment for the plaintiff. It is alleged that he, as such assistant overseer, had the rate in his possession at the time it was demanded. According to *Shreves v. Parker* (1 T. R. 141), we must assume that it was delivered to him for some purpose connected with the duties of his office; and as those duties can only be some of the duties of the principal overseer, he would have the rate in the same way as the overseer himself. If so, it follows that he was bound to produce it when lawfully demanded, and is liable to a penalty for refusing to do so. If this were otherwise the parishioners might be altogether deprived of the means of obtaining an inspection of the rate. The defendant then brought a writ of error, and, after argument, the judgment was given by *Tindal, C. J.* "In the argument of this case two objections have been taken; first, that an assistant overseer is not within the 17 Geo. II., which imposes the penalty; and secondly, assuming that he is within the statute, that he is not liable upon this record. We think neither of these objections can prevail. With respect to the first, the words of the 17 Geo. II. c. 3, s. 3, are (his lordship read the clause). It is said, that an assistant overseer does not come within either of these descriptions. It may be admitted that he is not a churchwarden or overseer, but whether he be or not a person authorized to take care of the poor will depend upon the nature of his appointment." The learned judge then read the 59 Geo. III. c. 12, s. 7, (*ante*, 32), under which he was appointed, and added, "It must,

therefore, depend upon the words of his appointment whether an assistant overseer be or be not a person authorized to take care of the poor; and if they are large enough to embrace all the authority of the superior officer, then, undoubtedly, he would be within the meaning of the statute a person authorized to take care of the poor, and liable to the penalty. It would, indeed, be a narrow construction of this statute to confine its operation to such officers only as were then in existence. It is true that it could not at the time be intended to apply to assistant overseers, because such officers were not then known; but the legislature having created an officer, who does come within the description of the statute, it would be a narrow construction of an act, which is not merely penal, but remedial, to say that such an officer was not within its operation. Still it is said, that upon this record the defendant is not brought within its operation. Now the declaration contains an allegation that the defendant is an assistant overseer, which allegation could not be proved, except by the production of the appointment, or by giving secondary evidence of its contents. Without adverting to any other allegation, the judge, who had the warrant of appointment before him, would direct the jury that the case was not within the statute, unless by the appointment the defendant had authority to take care of the poor. After verdict we must therefore assume that the authority of the defendant was such as would satisfy the description in the act. But the declaration further alleges, that the defendant was requested to produce the rate, and had it in his possession as such assistant overseer. At all events, therefore, if by his appointment he had no general authority to take care of the poor, he had a limited authority, part of which was to have the custody of the books; because we cannot after verdict intend that he had the book in his possession, otherwise than in the execution of his duty. The question therefore is whether, after verdict, it must not be intended that he was authorized to have the care of the poor, or that it was his duty to have the custody and possession of these books; and in either view of this case the declaration would be sufficient. If this declaration had contained an allegation that defendant had authority to take care of the poor, no doubt could exist; but as it is doubtful whether he had that, or a mere limited power, and as the judge must have directed the jury to find for the defendant, unless by his appointment he came within the description of the statute, we must after verdict intend that he had either a general authority to take care of the poor, or a limited authority to have the rightful custody of the books." The learned judge then distinguished the case from *Rex v. Everett* (8 B. & C. 114; 2 M. & R. 35), and affirmed the judgment. (3 Y. & J. 458; 6 Bing. 230; 3 M. & P. 749.)

Whitchurch v. Chapman, 3 B. & Adol. 691. By a local act for certain incorporated parishes guardians of the poor were appointed, and were authorized to appoint a clerk, and to make rates; and all poor rates and books purporting to be rates made for the said parishes, and all papers relating to the settlement of the poor, were to be delivered by the churchwardens and overseers to the clerk of the guardians for the time being, who was to cause the same to be preserved and filed. The clerk to the guardians paid the casual and out poor weekly, and transacted some other matters relating to the poor, and had the custody of the books. Lord Tenterden, "No persons are subject to the penalty imposed by 17 Geo. II. c. 3, s. 3, but churchwardens, overseers, or persons authorized to take care of the poor. The defendant was neither. The guardians were the persons so authorized. In *Bennett v. Edwards* (*ante*, 210), the defendant was assistant overseer, the case therefore fell within the words of the act, and he appeared to be the only person who had possession of the rate." *Littledale, J.* "In *Bennett v. Edwards*, the defendant, who had the custody of the rate, was a person authorized to take care of the poor. Here, by the local act, the clerk of the guardians is to have the custody of the poor rate, but the guardians are the persons who are authorized to take care of the poor, and the demand of inspection ought to have been made to them." *Parke and Taunton, Js.* concurred.

Rex v. Clear and another, 4 B. & C. 899; 7 D. & R. 393. A rule was obtained for a *mandamus* to churchwardens, commanding them to permit

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59 G. 3, c. 12, s. 7, not confined to officers then existing.

The statute is remedial as well as penal.

To subject a person to this penalty he must not only have the custody of the rate, but have the care of the poor.

Mandamus may be issued to compel allowance of

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inspection of books, &c. although the time for appealing has elapsed; but the party applying should state some grounds.

There may be other reasons besides the right of appeal.

J. P., a rated inhabitant of the parish, to inspect the accounts relating to the poor, for the years ending 1821, 1822, 1823, and 1824, at all reasonable times, paying, &c. as required by the act. *Bayley, J.* "The right of inspection given by the 17 Geo. II. c. 38, is not general, but for the remedy of the evils contemplated by the statute. The applicant should, therefore, have shown some ground for desiring to inspect the books; and for want of such statement I think that this rule must be discharged. It is no answer to the application, that in a subsequent clause a penalty is imposed; that is not given by way of compensation to the party grieved, but it is imposed for the relief of the poor, and to punish the offender." *Holroyd, J.* "In *Com. Dig. Mandamus (A)*, it is stated that the writ of *mandamus* is granted to prevent failure of justice, and for the execution of the common law, or of a statute, or of the king's charter; but not as a private remedy to the party. The applicant not having stated the grounds upon which he desires to inspect the books, has not brought himself within that rule for granting a *mandamus*. His right as a parishioner is a mere private right, for which the court will not grant it. The penalty, indeed, is not such a specific legal remedy as would prevent our interference, but inasmuch as I think the party should have pointed out some public ground for the court to proceed upon, and has not done so, this rule must be discharged." *Littledale, J.* concurred.

On an application for a *mandamus* in behalf of a rated parishioner, to allow him an inspection of the accounts of the expenditure of the parish monies kept by guardians of the poor, appointed under 22 Geo. III. c. 83, Lord *Tenterden, C. J.* "We have no doubt that the party is entitled to inspect the books at a reasonable time. Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reasons for inspecting the books. He has a right to see what has been done." Rule absolute. (*Rex v. Great Farringdon*, 9 B. & C. 541.)

13. *Relief from Rate by Justices, with consent of Overseers, in case of Poverty.*

Justices in petty sessions, with consent of parish officers, may discharge paupers from the payment of parish rates.(a)

13. *Relief from Rate by Justices, with Consent of Overseers, in Cases of Poverty.*

By 54 Geo. III. c. 170, s. 11, it is enacted, "That it shall and may be lawful for any two or more of his Majesty's justices of the peace acting for the county, riding, division, or jurisdiction, in which any district, parish, township, or hamlet shall be situated, in petty sessions assembled, on application made to them by any person rated to any rates or cesses within any such district, township, parish, or hamlet, to be discharged therefrom, and proof of his or her *inability, through poverty, to pay such rate or cess*, with the consent of the churchwardens and overseers of such district, parish, township, or hamlet, or of such other person or persons as is or are competent to act, under the authority of any act or acts of parliament, for the ordering, management, control, or direction of the poor of any such district, parish, township, or hamlet, to order and direct that such person shall be excused from the payment of such rate or cess, and to strike out his or her name therefrom: and the sum at which such person was so rated in such rate or cess shall not hereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same."

If the occupier is excused on account of poverty, the owner cannot be rated. (*Rex v. Hull Dock Company*, 5 D. & R. 359; 2 B. & C. 516, S. C.)

14. *Of Appeals and Remedies under Local Acts.*14. *Of Appeals to Sessions under Local Acts, and Remedies. (b)*

A person aggrieved by a poor rate may in all cases be relieved by *appeal*, and sometimes by application to *local authorities* under particular statutes,

(a) See Report of Poor Law Commissioners as to the policy of rating poor persons.

(b) A bill is now depending by

which the justices in petty sessions are enabled to hear appeals against rates. The act will be found in the Appendix, if it should become law.

but the rate cannot be abandoned by the *overseers*. (*Rex v. Cambridgeshire*, 2 B. & Adol. 370.)

If the rate be a *nullity*, or the person charged be *not rateable at all*, he may then not only appeal, but also dispute his liability when his goods have been distrained in an action of trespass or replevin. (*Milward v. Caffin*, 2 Bla. Rep. 1336; *Durant v. Boys*, 6 T. R. 580.) But if there be any thing legally due for poor rate, or there has been a distress under several warrants, and one of them was valid, then neither trespass nor replevin lies, but only a special action on the case for an *excessive levy*. (1 Adol. & Ell. 264.) It is always *safest to appeal*.

The following are some of the remedies provided by local acts :

Rex v. Justices of Kent, 9 B. & C. 283. By a local act, the management of the poor of Greenwich was vested in the churchwardens, overseers, governors and directors of the poor, and an appeal to them was given to any person thinking himself aggrieved by any thing to be done by virtue of the act, and if the appellant should be dissatisfied with their determination, then an appeal was given unto the quarter sessions; a parishioner having applied for relief against a rate to the churchwardens, overseers, governors, and directors, upon which, at a meeting regularly held, a resolution was moved, seconded, and carried, that *no further* notice of this application should be taken, against which resolution he appealed to the sessions. Lord Tenterden, "In this case a rate was made for a sum of money ordered to be paid out of that rate to S. (the vestry clerk). The appellant objected to that payment, and applied for relief under the local act to the churchwardens, overseers, governors, and directors assembled at a meeting on the 16th of July. They resolved that they would take no notice of his application for relief: they refused in fact to hear the appeal at all. The proper course under those circumstances would have been to have applied to this court for a *mandamus* to compel them to hear his appeal. If they had heard it, and come to a determination upon it, and he had been dissatisfied with that determination, he might then have appealed to the quarter sessions." In *Rex v. Tucker* (3 B. & C. 544; 5 D. & R. 434), the justices at petty sessions heard the evidence and dismissed the appeal.

Rex v. St. James, Westminster, 1 Ad. & El. 241; 4 N. & M. 252. By a local act for the relief of the poor in St. James, Westminster, it was provided that if any person should find himself aggrieved by any rate, he shall first apply to two justices, and *if not relieved*, shall be obliged to pay such rate, and then upon an appeal to the quarter sessions next after payment of such rate, the sessions may cause so much money to be returned as shall appear to the justices to have been overpaid, and to make such order as they think fit, which order was to be conclusive. The Earl of Burlington under this provision applied to two justices, who examined witnesses as to the value of the premises, and made an order (a) for the reduction of the rate. A rule was obtained to quash this order for insufficiency, and after argument, Lord Denman said, "The clause in question is an extraordinary one, and I should recommend the parish to have it made clear as soon as possible. I have a difficulty in inferring any authority in the justices to act upon an occasion of this kind from the words, 'if not relieved.' Still it must have been intended to give some power; and if so what is that power? It can only be to relieve the individual, and that is by amending the rate as far as it applies to him, and such amendment can be grounded only on an opinion formed by them that the party had been incorrectly rated. The objection here taken is not to what they have done, but to the reason they have given. They have said that they thought the principle of the rate erroneous, but that is immaterial. They had no authority to quash the rate; their power was only to amend it so far as it affected the individual, and I cannot say that they should not have acted to that extent, because they have at the same time declared that they thought the rate erroneous in principle. (b) It may be so, and yet

14. *Of Appeal &c. under Local Acts.*

Under local acts.

If the act directs the appeal to commissioners in first instance, that course must be pursued.

By the local act of St. James, Westminster, two justices have the power to relieve.

(a) The form of the order is given in the Report.

(b) This did not appear on the face of the order, but upon the affidavit.

14. *Of Appeal
&c. under Local
Acts.*

the error in principle may not affect any other person in the parish. If others were prejudiced by the amendment, the same remedy was open to them as to Lord Burlington. The justices have relieved a party whom they thought to be overrated; whether they thought so for good reasons or bad, or more or less extensive in effect, is, in my opinion, immaterial." *Taunton, J.* "In my opinion it follows by necessary implication from the words used, that the justices have authority to relieve, and consequently to form their conclusion as to granting relief in the way that appears to them most effectual." *Patteson, J.* "I certainly feel myself hampered by the words of this act: if however it is at variance with the general law of appeals, we cannot help that." The learned judge then quoted the clause as above, and added, "I cannot understand that the legislature should do so absurd a thing as to direct an application to justices, and then oblige the justices to say to the person applying, 'We have no power to relieve you, therefore you must go to the sessions.' As the party aggrieved cannot by this clause go to the sessions till after he has applied to the justices, it must have been meant that they should have power to hear the complaint and to relieve upon it. It is extraordinary that no power is given to administer an oath, and the justices have acted wisely and properly in not administering one. I think however we must take it by implication that the justices have power to deal with the complaint made by any person under it to any extent that may be necessary." The same judge observed during the argument, "It appears strange that this act gives the parish no appeal where the justices decide unfavourably to them." *Williams, J.* concurred.

Sudbury act gives an appeal, first to the borough sessions, and then to the county.

Rex v. Justices of Suffolk, 1 B. & Ald. 640. By a local act relating to the poor of Sudbury power was given to make a rate, and an appeal might be made against it, "first, to the justices of the peace of the town of Sudbury at their general quarter sessions next after the making and demanding the same, or at any other sessions to be held for the said town." A further appeal was given against the order of the justices of the town at their sessions, to the justices of the county at the general quarter sessions. At the January sessions for the town, the appellant instituted his appeal against four rates, made respectively on 17th September, 19th October, 16th November, and 14th December preceding. The borough sessions determined against him, and he appealed to the county sessions. *Bayley, J.* "The true construction of the clause is this, the legislature alluded to the general sessions which might be holden within the borough, and which might happen before the quarter sessions, not depending on that act of parliament by which the latter are regulated, the clause means that the party may appeal either to the quarter sessions or to the general sessions next after the rate, as the case may be. I think the appeal as to the first rate was clearly out of time."

*Appeal to borough
justices.*

Under 17 Geo. II.
c. 38.

Where the parish in which the rate is made is situated within a borough, the appeal, under certain circumstances, may be made to the justices of the borough. By 43 Eliz. c. 2, s. 8, the justices and sessions of boroughs have power over appeals against rates, made for places within the borough, exclusive of the county. (*Rex v. St. Mary Taunton*, 1 Bott, 282.) But their jurisdiction is modified by the 17 Geo. II. c. 38, s. 5, which provides in all corporations or franchises which have not four justices of the peace, it shall and may be lawful for any person or persons in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate.

An appeal to the county general or quarter sessions from corporations and franchises not having six justices allowed.

And by 1 Geo. IV. c. 36, it is enacted that "in all corporations and franchises not having more than six justices of the peace, nor having jurisdiction or authority over two or more whole parishes or wards contained within such corporation or franchise, it shall and may be lawful for any person or persons, in any of the cases mentioned or referred to by the said act or acts or either of them, where an appeal is given by the said act or acts or either of them, to appeal, if he, she, or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division

wherein such corporation or franchise is situate, in as ample manner as if such corporation or franchise had not four justices of the peace: provided always, that nothing herein contained shall be deemed or taken to extend to any city or town corporate being a county of itself."

Rex v. Justices of Essex, 5 M. & Sel. 513. Upon a rule for a *mandamus* to receive an appeal against a poor's rate for the parish of Saffron Walden, the case was, the town and parish of Saffron Walden are co-extensive. The town is a town corporate, and by the charter the mayor during his mayoralty and for one year next ensuing, the recorder and the deputy recorder, and the two senior aldermen (making together six), are constituted justices. The corporation have held a court of quarter sessions from the date of their charter. The mayor is elected from the aldermen, and the aldermen from the inhabitants, and, except the recorder and deputy recorder, the justices composing the court of quarter sessions must be resident in the parish of Saffron Walden. The appellants gave notice, and (among others) to the mayor and recorder, as being two of the persons in respect of whom they were over-rated; and the other town justices, except the deputy recorder, were also rated in the said assessment. Lord *Ellenborough*, C. J. "Of the six corporation justices, consisting of the recorder, the deputy-recorder, two senior aldermen, and two other persons, it was contended that the last four were disqualified by law from sitting upon any appeal in any matter respecting the poor laws, as being in respect of their inhabitancy and liability to be rated within the borough, on that account incompetent, and that these being judicial acts, as persons interested, they were in the language of one of the cases cited, tacitly excepted. And the case of *Greate Charte and Kennington* (2 Str. 1173), and of *Foxam Tything*, in *Com. Wilts* (2 Salk. 607), were relied on to this effect; but upon looking into the 43 Eliz. c. 1, 16 Geo. II. c. 18, and 17 Geo. II. c. 38, we are of opinion that the justices of the borough of Saffron Walden are not disqualified from sitting as a court of appeal under the poor laws, on the ground of their being rated or chargeable with the rates of the place within which their jurisdiction is to be exercised. By stat. 43 Eliz. c. 2, s. 8, as head officers of the town corporate, they, being justices of the peace, have the same authority within the limits and precincts of their jurisdiction, as is limited, prescribed, and appointed by that act to justices of the peace of the county, 'and no other justices of the peace are to enter or meddle there.' Being invested with the like jurisdiction, both original and appellate, on the subject of the poor laws with justices of the county, and with the sort of *ne intromittant* provision in their favour as to its exercise which I have last stated, there occurred in Mich. term, 16 Geo. II., the case in 2 Str. 1173, in which it was held that a justice could not join in removing a pauper from his own parish. This decision in its letter, if it should continue to be acted upon as a general rule of law, would have wholly disabled the justices of a great many towns corporate from acting in the execution of the poor laws, both in an original and in an appellate character, as justices in respect to the same; and it is fair to presume, from the very nearly contemporary date of the stat. 16 Geo. II. c. 18, with this decision, that this act was introduced to obviate this inconvenience; for reciting, 'that doubts had arisen whether according to the laws and statutes then in force, his majesty's justices of the peace might lawfully act in any case relating to the parishes and places to the rates and taxes of which such justices respectively are rated or chargeable,' it enacts, 'that it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough or town corporate, within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things, appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid.' However, inasmuch as from the greatness of the number of justices

14. *Of Appeal &c. under Local Acts.*

Where corporation justices consist of a greater number than four an appeal lies to them at sessions against a poor rate, although there be less than four who are not interested in the question.

14. *Of Appeal,
&c. under Local
Acts.*

of the peace for counties, the attendance of any particular justice could be spared upon appeals, it provides 'that that act, or any thing therein contained, should not authorize or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed or chargeable as aforesaid; any thing therein contained to the contrary notwithstanding.' Here it will be observed, that 'justices of the peace for cities, liberties, franchises, boroughs, or towns corporate,' who are all included by name in the enabling clause of this statute, are not included in this prohibitory provision in the case of appeals, which prohibition is confined expressly to justices of the peace for counties and ridings at large only. The stat. 17 Geo. II. c. 38, s. 5, probably adverting to and meaning to obviate the danger of admitting justices, under any bias or interest in the subject-matter of the appeal, to sit upon such appeals, where from the smallness of the number of the attending justices, such bias or interest shall be likely to operate with prejudicial effect upon the administration of justice, provides, 'that in all corporations and franchises, which have not four justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate;' where the corporation justices consisted of a larger number of persons than four, thinking it probably unnecessary to interfere with the exclusive jurisdiction on this subject, which they derived under stat. 43 Eliz. c. 2, s. 8, which has already been observed upon. We are therefore, upon a view of the provisions of the several statutes referred to on this subject, and adverting to their policy and object, of opinion that the legislature meant, in the case of borough justices, (where the whole number of them was four or more), as in the present case, to leave their jurisdiction under 43 Eliz. entire, not curtailed or abridged, from suspicions of possible abuse: a liberal confidence on the part of the legislature, which ought to be repaid by the most perfect impartiality and justice on the part of those to whom such a jurisdiction is under such circumstances entrusted." Rule discharged.

*Appeal to county
sessions.*

If the parish is not situated within any *borough* the appeal must be to the county sessions.

43 Eliz. c. 2, s. 6, enacts, "That if any person or persons shall find themselves grieved with any cess, or tax, or other act done by the said churchwardens and other persons, or by the said justices of peace, that then it shall be lawful for the justices of the peace at their general quarter sessions, or the greater number of them, to take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties."

*The regulations
of 17 Geo. 2, c 38,
as to appeals
against rates.*

17 Geo. II. c. 38, s. 4, enacts, "That in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of his majesty's justices of the peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable *notice* to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise where such parish, township or place lies; and the justices of the peace there assembled are hereby authorized and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall *adjourn* the said appeal to the next quarter sessions, and then and there finally hear and determine the same."

*Notice of appeal.**Adjournment.*

Sect. 6. "And whereas it hath been held that upon appeals from rates and assessments, the justices of the peace may not only quash the old rates, but make new rates and assessments, from which no appeal can be had; be it enacted by the authority aforesaid, that upon all appeals from rates and assessments, the justices of the peace (where they shall see just cause to give relief) shall and are hereby required to *amend* the same, in such manner only as shall be necessary for giving such relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then and in every such case the said justices shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly."

14. *Of Appeal, &c. under Local Acts.*

Amendment of rate.

Sect. 4. "The said justices may award and order to the party for whom such appeal shall be determined, *reasonable costs*, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons, by an act made in the 8th & 9th years of Will. III., intituled 'An act for supplying some defects in the laws for the relief of the poor in this kingdom.'"

Costs.

Upon an appeal against a rate on account of the omission of rateable persons, the sessions had no power to insert the names until 41 Geo. 3, c. 23, called Lord *Ellenborough's Act*, which, by s. 1, enacts, that "upon all appeals from any rate or assessment made for the relief of the poor of any parish, township, vill, or place, the court of general or quarter sessions of the peace shall, and such court is hereby authorized and required (in all cases where they shall see just cause to give relief) to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment: Provided always, that if the said court shall be of opinion that it is necessary, (a) for the purpose of giving relief to the person or persons appealing, that the rate or assessment should be wholly quashed, then the said court may quash the same, but nevertheless, all and every the sum and sums of money in and by such rate or assessment charged on any person or persons, shall and may be levied and recovered by such ways and means, and in such and the same manner, as if no appeal had been made against such rate or assessment: and all and every the sum and sums of money which any person or persons charged in such rate or assessment shall pay, or which shall be levied upon or recovered from him, her, or them, shall be deemed and taken as payments on account of the next effective rate or rates, assessment or assessments, which shall be made for the relief of the poor of the same parish, township, vill, or place."

Amendment of rate under 41 Geo. III. c. 23.

On appeal from any poor rate, the sessions may insert or strike out names, or alter the sums.

By s. 4. "All notices of appeal from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney on his her, or their behalf; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them, and the particular causes or grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter sessions to which such appeal shall be made, shall not examine or enquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal."

Notice to be given to the churchwardens and overseers, stating grounds of appeal.

Sect. 5. "Provided nevertheless, that with the consent of the overseers, signified by them or their attorney in open court, and with the consent of

Appeals may be decided, if the parties consent, although notice, be not given.

(a) Or if necessary for giving relief may quash it, but the sum to be paid and payments to be deemed on account of next rate.

14. *Of Appeal, &c. under Local Acts.*

Persons appealing against any rate shall give notice, not only to the churchwardens, &c. but also to the persons interested, &c.

any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing; and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or mis-stated in such written notice, where any notice shall have been given in writing."

Sect. 6. "If any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they, ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she, or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her, or them to be therein rated and assessed in any sum or sums of money; or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to or alter the rate or assessment accordingly."

Time of appealing.

To what Sessions Appeal to be made, as regards Time.

Before some recent decisions, it had been thought necessary to enter and respite an appeal at the next practicable sessions, even though the order, &c. was served too late to give such notices as the sessions required for trying an appeal. However, a more sensible rule has now been adopted. And in *Rex v. Justices of Southampton*; *Rex v. Justices of Devon*; and *Rex v. Justices of Kent*, 8 B. & C. 639, and in notes, it was determined that it was not necessary to enter and adjourn an appeal when there was not sufficient time to give the notice of trial required by the sessions. (a)

The next sessions means the next sessions at which it is practicable to try the appeal.

An appeal against a poor rate must be made to the next sessions after the publication of the assessment, for it is by making the rate that the party is aggrieved. (*Rex v. Micklefield*, 1 Bott, 113; *Cald.* 507.)

Appeal must be to the next sessions after the allowance.

In *Rex v. Atkins*, 4 T. R. 12, it appeared that the rate was made in October, 1789, and allowed in the November following, against which the defendant appealed to the next Easter sessions, when the appeal was dismissed with costs, because it was not made to the sessions next after the allowance. The court without hearing any argument confirmed the order of sessions, on the authority of *Rex v. Penryn* and *Rex v. Micklefield*.

One intervening day between the publication of a rate, and the next immediate quarter sessions, is not sufficient for an effectual notice of appeal.

Rex v. The Justices of Sussex, 15 East, 206. On the 5th of October a rate was allowed, and on the following day (Sunday) it was published in the parish church of Horsham. The Michaelmas quarter sessions were holden at Petworth, on the 8th of October, there being only one intervening day between the publication of the rate and the quarter sessions, which was too short a time to inspect the rate, to see if the inequalities in the former rate had been continued, and whether the property omitted in former assessments had been inserted in the rate, so as to determine the deponent whether or not to appeal against it at the said sessions. The court determined the notice

(a) See Vol. I. title Appeal.

bad, and upon this confirmed the rate. Lord *Ellenborough*, C. J. asked why the parish officers made their rate so close upon the time of the sessions; it appeared as if they had done it with a view of ousting the parties of their appeal. *The court had decided that morning that the next sessions meant the next practicable sessions at which an effectual appeal could be lodged.* If by the late publication of the rate the parties are driven into such a narrow point of time as not to be able to make an effectual appeal at the next sessions, those must be considered the next when such appeal can be made effectually.

Rex v. The Justices of London, 15 *East*, 632. An appeal against a poor's rate in London or Middlesex must be made as in all other counties to the next (i. e. next practicable) general *quarter* sessions; though the 17 Geo. II. c. 38, s. 4, in its terms gives the appeal to the next *general* or *quarter* sessions; it appearing from other parts of the act as well as from other acts *in pari materia*, that those terms are used synonymously, and though in the two counties named there are four *general* as well as four *general quarter* sessions. (See also *Rex v. Suffolk*, 1 *B. & Ald.* 640.)

Rex v. The Justices of Wilts, 8 *B. & C.* 380; 2 *M. & R.* 401. A rate for the parish of Laycock was published on the 16th of September, 1827. The quarter sessions were held on the 16th of October at Marlborough, which is 16 miles from Laycock. The appellant gave no notice of appeal before the Michaelmas sessions, but at that sessions the appeal was entered and adjourned as a matter of course. It appeared upon affidavits that it was the usual practice of the court of quarter sessions for the county of Wilts, in appeals against rates, to enter the appeal at the sessions next following the making and publication of the rate, and to adjourn it to the next sessions as a matter of course. At the Epiphany sessions, the justices refused to hear the appeal. Lord *Tenterden*, C. J. "I think that the sound construction of the 17 Geo. II. c. 38, s. 4, is, that the justices are to receive an appeal against a rate at the next sessions after publishing the same, and that they are then to exercise a discretion whether they will hear and determine it at that sessions, or respite it to the next. It is impossible to say that the matter must at all events be determined at the first sessions. The statute expressly mentions one case where the justices are to adjourn the appeal, and that is where it shall appear to them that reasonable notice has not been given, but other cases may occur in which it may be fit to adjourn the appeal, even though reasonable notice has been given, as in the case of the unavoidable absence of a material witness. Here it appears that the practice of the sessions has been to allow appellants to enter their appeals at the sessions next following the publication of the rate, and to adjourn the hearing to the second sessions as a matter of course. That being the general practice, I think that the appellant in this case, who acted on the faith that such practice would be adhered to, ought not to be deprived of his right of appeal, and therefore that the rule for a *mandamus* ought to be made absolute. At the same time I think it would be more beneficial to the public, and more consistent with the intention of the legislature, if the justices did not adjourn appeals against rates as a matter of course. I think they should endeavour to induce parties to try their appeal at the next practicable sessions after the publishing of the rate. *Bayley*, J. "I am of the same opinion. It was competent for the justices at the first sessions after the publishing of the rate to refuse to receive the appeal unless there was proof that notice of appeal had been given; but they did receive the appeal. Having received it, it was then competent to them in their discretion to adjourn it, and they did adjourn it. I think the appeal ought to have been heard at the next sessions after that adjournment." Rule absolute.

Rex v. Justices of Monmouthshire, 1 *Bar. & Adol.* 895, the principle of which may be applied to this subject.

Rex v. Justices of Sussex, 7 *T. R.* 107; 2 *Bott*, 965. The appeal may be made to an adjourned sessions. And in this case Lord *Kenyon*, C. J. referred to the case of *Rex v. Monks Risborough*, 2 *Bott*, 954, and *Rex v. Hinderclive*, 2 *Bott*, 956.

14. *Of Appeal, &c.*

Meaning of "general" or "quarter" sessions.

The sessions have a discretion to hear an appeal against a rate at the sessions next after it is published when it is entered; but where it is the practice to adjourn the hearing to the next sessions after the appeal is entered, the appellant is entitled to try then, the statute 17 Geo. 2, c. 38, s. 4, not being imperative in this respect.

But the justices should not adjourn the hearing as a matter of course.

Appeal may be to an adjourned sessions.

14. *Of Appeal, &c.*

Ground of appeal.

Against what an appeal lies.

Several having a joint grievance may join in a notice of appeal.

There may be one appeal against several rates.

In an appeal from the borough sessions the appellant is confined to his grounds there.

Where the ground of appeal is that a person has been omitted, the sessions have no jurisdiction unless notice has been given to that person.

It is a good ground of appeal that the rate does not show on the face of it in respect of what property the several persons are rated. For "if any person wished to appeal, on the ground that another was under rated, how could he tell in respect of what property the rate was imposed?" *Abbott, C. J. Rex v. Aire and Calder Navigation*, 4 D. & R. 253; 2 B. & C. 713. See *ante*, 206, S. C.

Rex v. Mayor and Justices of Norwich, 3 D. & R. 42. By 10 Anne, the city of Norwich, and hamlets and liberties of the same, were incorporated for the purpose of better employing and maintaining the poor thereof; and the guardians thereby appointed were empowered from time to time to ascertain what aggregate sums would be necessary for that purpose, and to ascertain what proportion each parish, &c., should contribute, and then certify the same to the justices, two of whom were to issue their warrant, requiring the proper officers of each parish, &c., to rate and assess the amount on the respective inhabitants; and it was provided, that if any person, parish, &c., should find himself or themselves to be unequally assessed, he or they might appeal at the next sessions held after such assessment made and demanded. And where, under this act, the governors certified that the hamlet of L. ought to pay a certain proportion of an assessment made upon the whole city, and two justices issued their warrant, requiring the collectors of the hamlet to assess that sum upon the inhabitants, and the hamlet being aggrieved by such assessment: held, that the churchwardens and overseers might appeal against both the certificate and the warrant thereon, as being an assessment made and demanded, within the meaning of the appeal clause in the statute.

In *Rex v. Sussex* (*ante*, 220), 15 East, 206, it was objected that the appellants should have given separate notices. But on *Rex v. White* being quoted, Lord *Ellenborough* said, "he thought that that case which had been much considered was authority sufficient to support the present appeal."

Rex v. Justices of Suffolk, 1 B. & Ald. 640. This was an appeal against four distinct rates, and it was urged that it was not competent for the appellant to do this. *Bayley, J.* "The act which gives the appeal states that a party who may find himself unequally taxed or assessed may appeal against any such rate. It does not say that he must appeal against that rate *per se* without joining it with the others, which, being monthly, may have been made in the interval between one sessions and the next. The joint appeal may be then considered as a separate appeal against each rate, and if the sessions should be of opinion that injustice would be done by hearing the appeal against the four rates jointly, they might determine upon them separately; but they are not bound to do so. The party, therefore, may legally appeal against the poor rates in the manner adopted by him in the present case."

If, however, it is an appeal from the borough sessions, the notice of appeal cannot be enlarged; the appellant can enter at the county sessions into those grounds only which he took at the borough sessions.

Rex v. Brooke, 9 B. & C. 915; 4 M. & R. 719. In an appeal against the rate, the notice stated the grounds to be, that two persons, who were named, had rateable property and were omitted. But no notice of appeal having been given to either of those persons, the sessions confirmed the rate without going into the merits. *Bayley, J.* after quoting *Rex v. Aberavon*, 5 East, 453, as furnishing an argument in support of the order of sessions, said "Before the 17 Geo. II. c. 38, whenever a party had been improperly omitted out of a rate, the sessions were bound to quash it. That statute was passed to remedy that inconvenience, but then it was thought unjust that a party should be affected by having his name inserted in a rate without notice, and the 41 Geo. III. c. 23, was passed to remedy this evil. The preamble of that statute recites, that by 17 Geo. II. power was given to the justices upon appeals from rates to give relief without altering the rate in other respects. But if the argument now urged were to prevail, the sessions would no longer have the option of amending the rates: they might in all cases of omission be compelled to quash them, and so appeals would be doubled in number. The 6th section however is general, and applies equally to all cases of amending or quashing rates. It provides in plain unequivocal terms, that if there is an appeal against a rate because some person who ought to have been rated has

been omitted, notice shall be given to such person, and if it be not given the appeal shall not be heard. The sessions in this instance have done right, and their order must be confirmed." *Littledale and Parke, J. concurred.* (a)

14. *Of Appeal, &c.*

Notice of Appeal.

Rex v. Justices of Suffolk, 1 B. & Ald. 640. *Bayley, J.* "The fourth ground of appeal is, that the appellant is rated in a greater and higher proportion than all the other inhabitants and occupiers whose names are mentioned in the said rate. It is contended that this made it necessary to give notice to all those other inhabitants and occupiers, amounting in the whole to 364 persons. But that it is not necessary. The 41 Geo. III. c. 23, first gave to the justices the power of amending the rate appealed against, instead of altogether quashing it, but required the grounds of the appeal to be stated, and notice to be given to the parties affected by the appeal. So that where the ground is that A. B. or C. are under-rated, it would be necessary to give notice to those individuals: but where the ground of complaint is, that the party appealing is over-rated in respect of all the rest, then it would be necessary, because the alteration sought is the diminution of his assessment only, and the rest of the rate remains entire." The other judges concurred.

Notice to the individuals unnecessary where the ground of appeal was that the appellant was rated higher than the other persons named in the rate.

Rex v. Bromyard, 8 B. & C. 240; 2 M. & R. 280. This was an appeal against a poor rate. The rate did not describe the property in respect of which the several persons were rated. But this was not stated in the notice as a ground of appeal. The sessions however quashed the rate upon this objection, subject to the opinion of the court. *Bayley, J.* "There can be no doubt that it ought to appear on the face of the rate in respect of what property the assessment is made upon each individual charged in the rate: and if the omission of that statement had been pointed out by the notice, as one of the grounds of appeal, it would have been a sufficient ground for quashing the rate. In many instances the specification of the property in respect of which the assessment is made, will give no further information to the parties to be affected by the rate, than the fact of their having been rated at a specific sum. But still the party rated has a right to know in respect of what property he is rated, in order that if he is over-rated in respect of that property he may appeal. If however he be satisfied with the amount of the sum for which he is rated, he will not appeal, because it will not be his interest to have the rate corrected. By 41 Geo. III. c. 23, the legislature intended to limit the expense of appeal, and lessen the labours of the justices at sessions. (He then read the 4th section, *ante*, p. 219, and continued.) Now suppose there were no notice of appeal whatever, could the sessions quash the rate upon the ground that it was bad for a defect apparent on the face of it? clearly not. Or could the sessions quash the rate for such a defect, if a general notice of appeal were given, without specifying any cause? They certainly could not, because the statute prohibits their inquiry into any causes of appeal except those mentioned in the notice. For the same reason they cannot, in a case where certain causes of appeal are specified in the notice, go into others not specified. It is said that the words 'examine and inquire' are applicable to those cases only where extrinsic evidence is required to show the defect of the rate, and not to cases where the defect appears on the face of it. But we should not do justice to the intention of the legislature, if we entered into so very critical an examination of the language of the act. When the language of a deed is made the subject-matter of discussion, in order to ascertain thereby its legal effect, it may be said to be the subject of examination and inquiry. It has been said that this rate is illegal and void on the face of it, because the property in respect of which the assessment is made is not specified. I am of opinion that it is not illegal and void upon that ground, unless that be pointed out as a specific cause of appeal in the notice. That is one ground of objection which will render the rate liable to be quashed. In

But the sessions cannot quash the rate on this ground, unless it is stated in the notice of appeal.

(a) The argument was, that if the sessions might amend the rate, but if the notice was not given, that then the rate must be quashed.

14. *Of Appeal, &c.* *Rex v. Aire and Calder Navigation* (2 B. & C. 713; 4 D. & R. 253; *ante*, 206), the objection was specifically pointed out in the notice of appeal." *Holroyd, J.*

"It seems that the sessions had no jurisdiction to consider this objection, unless it was specified in the notice as a ground of appeal. They had no jurisdiction whatever over the rate unless the notice required by the statute was given, except in the case provided by the 5th section (*ante*, p. 219). It has been argued that the words 'examine and inquire' are to be construed more narrowly than their natural import warrants, and the object of the legislature seems to require. The fourth section requires that all notices of appeal shall be given in a particular manner, and that the particular causes or grounds of appeal shall be specified in the notice. So far that section is directory, but in what follows, it is not merely directory, but prohibitory. It goes on, 'and upon the hearing, the sessions shall not examine or inquire into any other grounds of appeal than such as are specified in the notice.' Construing this according to the natural import of the words, I think that it means that the sessions shall not enter into any other causes of appeal than those specified in the notice: but assuming the meaning of those words 'examine and inquire' to be doubtful, I think we ought to put upon the clause that construction, which will have the effect of preventing the 'quashing of rates.' The inconvenience mentioned in the recital, which it was the object of the statute to remedy, and construing the clause with reference to that object, I think that the sessions had no power to enter into any other causes of appeal than those stated in the notice: and that being so, I think we must hold that the sessions had no jurisdiction to quash the rate upon the ground that the property in respect of which the assessment was made was not described, because that was not specified in the notice as a cause of appeal." *Littledale, J.* "By 43 Eliz. c. 2, the rate was to be made on every inhabitant in respect of certain descriptions of property. The property in respect of which individuals are assessed ought therefore to be specified in the rate for two purposes. First, that the parties rated may see whether they have the property, and that it is the subject of a rate: secondly, that other persons may see whether the rate be equally assessed. If the property is not specified, the rate is defective and informal; and that informality is a ground of appeal, provided it be made the subject of appeal by giving the required notice. The statute says, that the sessions shall not examine or inquire into any other causes of appeal than such as are specified in the notice. It is true that in this case there was a defect on the face of the rate itself, which would therefore appear on inspection. But if neither the person whose property is omitted, nor others who have an interest that the rate should be equal, make the omission of such property a ground of complaint, the justices have no jurisdiction to quash the rate on that account. I think that the words 'examine or inquire' apply to an examination by inspection as well as by extrinsic evidence. The word 'examine' is frequently used in the same sense as the word 'inspect.' Thus the 27 Eliz. c. 5, which gives the writ of error from K. B. to the Exchequer Chamber, enacts, 'that the record may be removed there to be examined by the justices and barons, and they are to have full power to examine all such errors as shall be assigned.' Now when error is assigned upon a matter of law, it appears upon the face of the record, and whether there be good cause of error or not is ascertained by inspection of the record and not by extrinsic evidence. So, in 31 Edw. III. c. 12, which gives the writ of error from the law side of the Exchequer to the Chancellor and Treasurer, the word *examine* is used in the same sense. I therefore think that the sessions could not take notice of this objection to the rate."

Which party shall begin.

Rex v. Newberry, 4 T. R. 475. Upon an appeal against a poor rate the question was, which party should begin? The court said, that where the appellant alleges that he has no rateable property within the place, the respondent should first show that he has some property liable to be rated; for it is impossible for the appellants in the first instance to prove the negative. And *Heywood, J. amicus curiæ*, said, "that in Yorkshire, where more appeals of this kind were lodged than in any other county, when the appellant objected

to his being rated at all, it is the practice for the respondents to begin: but if he object to the *quantum* of the rate, then the *onus* lay on him.

Rex v. Topham, 12 East, 546. The defendant appealed against a rate for Driffield, which the sessions confirmed. Case:—The defendant was rated as occupier of property of the annual value of 250*l.*, and the grounds of his appeal were, that he had no rateable property in the parish, and not to the amount at which he was rated. The respondents proved that the appellant was in the annual receipt of certain tithe-rents, originating in the Driffield enclosure act, of the annual value of 6*s.* 8*d.*; and that other sums were received by him for tithe-rents, but there was no proof of their amount. Here the respondents closed their case, insisting that as they had proved the appellant to be in possession of *some* rateable property, it was incumbent on him to prove that in fact that he had been overrated. The appellant insisted that this composition or rent was not rateable at all. The sessions held that it was rateable. The appellant then contended that as there was no proof of any specific sum having been paid beyond the 6*s.* 8*d.*, the rate ought to be amended by inserting that sum instead of the 250*l.* The sessions held that the proof of overrating lay on the appellant, and confirmed the rate generally. The appellant was lessee of the prebendary of Driffield, who was entitled under the inclosure act, &c. to a yearly rent or composition in lieu of the tithes of corn, grain, and hay therein, of 267*l.*, to be paid by the owners and proprietors of certain lands in certain proportions. And by the act, in all future rates and levies in the said townships, the composition rents were to be assessed in the same proportion as the other landholders. Lord Ellenborough, C. J. said, "The question is, whether a person, who I will suppose for the present is liable to be rated for something beyond the 6*s.* 8*d.*, can be rated to the amount of 250*l.*, and then left to pare down that assessment upon an appeal to the amount which it ought to be? He might as well have been charged to the extent of 50,000*l.*" [Parke, J. said he could not pretend to argue that that could be done, but here the act of parliament stated the composition to be more than the appellant was rated for.] On which his lordship observed, "It is not stated as a fact in the case that the appellant was in the receipt of the rents and compositions to the amount of 250*l.* If the sessions have proceeded upon what the court has said in some cases, that if the party rated have rateable property in the parish they will not inquire into the *quantum* of the rate, they have egregiously mistaken the court. When the question before the sessions is upon the *quantum* of the rate, the officers making it must show to the justices some probable ground for the amount at which they charge the party in the rate. The mischief of any other rule would be enormous; a small occupier may be rated at once in the round sum of 1000*l.*, and left to struggle his way out of that charge as he can." For the appellant it was observed, that the question made at the sessions was, whether the appellant should begin by proving his case, that he was overrated; or whether the parish officers should begin by proving a probable case for rating the appellant at so much? On which Le Blanc, J. said, "The court will have no difficulty in dealing with that naked proposition whenever it should be brought nakedly before them." The case was sent back to sessions.

Rex v. Justices of Suffolk, 6 M. & Sel. 57. This was an appeal by a person who was rated as the occupier of tithes and other things in a gross sum. According to the practice of the sessions the appellant ought to begin, but he refused to do so, and the appeal was dismissed. Upon a rule for a *mandamus* Lord Ellenborough said, "As a general rule I should say that the granting of a writ, which has for its object the reversal of the order of proceeding at quarter sessions according to the rules of practice which there prevail, is not a jurisdiction, which, if the court possess it, it will be inclined to exercise, unless it be apparent that great injustice will follow the refusal of the writ. Now here the appellant did not dispute that he was rateable, but only the amount of the rate; and it is complained that the justices at sessions, according to their practice, called on him to begin and make good his allegation that he was overrated. The appellant says that this was impossible; but he has not shown why, nor even now ventures to state to us that he was really over-

14. *Of Appeal, &c. under Local Acts.*

Where the appellant disputes before the sessions the *quantum* of the rate, it is not sufficient for the respondent to show that the appellant is in possession of some rateable property within the parish, they must also show some *probable* ground for the amount at which they have charged the party in the rate.

The practice of the sessions, that the appellants should begin, is not so inconvenient that K. B. will controul it.

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rated: so that he stands merely on the irregularity of the rule of practice, as to which it is urged, that the sessions have not proceeded according to what is thought to be and perhaps may be a more convenient rule. But if under such circumstances the court were to interfere, I am apprehensive that we might be attaching to ourselves a most inconvenient jurisdiction. It would come to this, that wherever the practice at the different sessions should happen to vary, we should be called on to decide between them." *Bayley, J.* "I do not see that the practice complained of is so inconvenient as alleged, and if the court were to interfere in this instance we should have to grant a *mandamus* in every instance where the sessions proceed according to a rule of practice, which we may not think the most convenient." *Abbott, J.* "It would be a dangerous precedent if we were to grant this writ upon the cause alleged. In general a *mandamus* to the justices to hear, proceeds upon the statutes. This writ is asked, because of some supposed error in practice." *Holroyd, J.* "The case of *Rex v. Topham* not only differs from this in the points stated for the opinion of the court, but the decision also proceeded upon the special circumstances of that case. At the conclusion it was stated that the question made at the sessions was whether the appellant should begin by proving his case that he was overrated, or whether the parish officers should begin by proving a probable case for rating the appellant at so much. And the court observed that they would have no difficulty in dealing with that proposition when it should come nakedly before them. So that it clearly appears the court did not consider that they were determining the simple question in that case." Rule refused.

Appellant not to
furnish the means
to enable sessions
to amend the rate.

Rex v. Hull Dock Company, 3 B. & C. 516; 5 D. & R. 359. See this case *ante*, 173. The appellant objected to the rate because certain ship owners were not rated for their ships, and upon this point *Abbott, C. J.* said, "It was pressed on us in the argument, that as the appellants had not made out what was each ship's profit, they had not given to the sessions the means of amending the rate, but this is founded on a misapprehension of the duties of the parish officers and the appellant. Where property is rateable it is the duty of the officers to include it in the rate, and to take what means they can to ascertain its value. It is not for them to omit it altogether and to cast upon the appellant what is properly their duty, the burthen of proving its value. In cases of single omission the difficulty might not be very great, but if all the property of a given description is omitted the difficulty might be excessive. Before 41 Geo. III. c. 23, the omission of a single individual, who ought to have been included, compelled the sessions to quash the whole rate, and so as he was rateable at all, the extent to which he was rateable was not in question. The 41 Geo. III. requires the sessions to alter or amend a rate appealed against without quashing it; but with proviso that if the sessions shall think it necessary for the purpose of giving relief to the appellant to quash the rate, they may do so; and when a rate contains so many omissions that it can hardly be expected of an appellant that he should have evidence to show the extent to which each person omitted ought to be rated, and where the investigation before the sessions would be likely to exhaust more time than they could reasonably be required to give up, we think it would not be an improper exercise of their discretion to quash the rate and make the officers do in the end what they ought to have done in the beginning.

Overseers cannot
abandon a rate.

The remedy by appeal must be pursued, for the overseers have no power to abandon a rate duly allowed and published. In *Rex v. Justices of Cambridge*, 4 Nev. & Man. 238; 2 Ad. & E. 370, it appeared that the appellant, having paid his rate and given notice of appeal, received notice from the overseers that they abandoned the rate, as it could not be supported, and that he might receive the money back. The money was afterwards tendered, but they refused to pay the costs, and an appeal was entered. The sessions made the following order: "It was ordered that the overseers of the poor did abandon the rate on the 8th day of October, and that the court had no jurisdiction to hear the appeal." A rule was obtained for a *mandamus* to enter continuances and hear the appeal, which was made absolute, Lord Denman saying, "The justices were not right in their judgment, for they certainly had a jurisdiction, and the rate exists at this moment."

Rex v. Ambleside, 16 East, 380. The question intended to be submitted to the court in this case, was whether stock in trade was rateable? But Lord *Ellenborough* said, "Is there not another question, whether the rate ought not to have been amended instead of being quashed? It is an objection applicable (a) to one person, and the justices should have amended the rate and not quashed it. The 41 Geo. III, c. 23, was passed for the very purpose of enabling them to do so, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. We say therefore that this rate was not properly quashed, and ought to have been amended." (b)

Rex v. Aberavon, 5 East, 452. The ground of appeal was that certain lands were omitted, which were in the occupation or possession of the corporation. The sessions quashed the rate, and granted a case, from which the court could not collect whether the burgesses stocked the land in right of their franchise or by permission of the corporate body, and the court were inclined to send the case back, but Lord *Ellenborough* said, "I think we may deal with the case as it is. Here is a large tract of property producing profit, which is liable to be rated, and no person in fact is rated for it. This property is stated to belong to the corporation, and it may be doubtful whether the occupation shown be their occupation or that of individuals. Under these circumstances I cannot say the sessions have done wrong in quashing the rate. The rate therefore is quashed, because no person has been rated for property which ought to have been rated."

Rex v. Justices of Essex, 8 T. R. 583. Notice of appeal against a rate was given, and on the day before the sessions countermanded, whereupon the parish officers applied to the quarter sessions for the costs of preparing to resist the appeal. But the court thought they had no authority under the statute to give costs, as no appeal was entered. *Per Curiam*, "The quarter sessions have no authority to award costs under the 17 Geo. II. c. 38, unless an appeal has been entered and determined. The determination of the appeal is a condition precedent to the power to give costs, the words of the act being, 'may award to the party for whom such appeal shall be determined reasonable costs,' &c., and the subsequent words, 'in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons,' &c., only relate to the mode in which those costs are to be recovered. By referring to the former statute under which costs may be given in two instances, and by mentioning only one of those instances in the latter statute, it is evident that the legislature did not intend by the latter to authorize the sessions to give costs in both cases."

Rex v. Causton, 4 D. & R. 445. Where an appeal against a poor's rate was entered at the Midsummer, and respited until the Michaelmas sessions, and then further respited at the instance of the appellant till the Epiphany sessions, four days previous to which the respondents gave notice that they

14. *Of Appeal, &c. under Local Acts.*

When the rate should not be quashed.

When it may be quashed.

The sessions cannot award costs unless the appeal be entered.

But if entered, they may, though the rate is quashed by consent.

(a) The sessions had quashed the rate because W. W. was not rated. This was the form of the case, but the notice of appeal pointed out several others similarly circumstanced.

(b) The court did not advert to the power given to the sessions to quash the rate, and the sessions might have been of opinion that relief could not be given to the appellant without quashing it. Wherever the amendments to be introduced are such as will essentially alter the character and proportion of the rate, so as to render it a new rather than an amended rate, it should be quashed. Thus if the ground of complaint is that personal property is altogether omitted (*Rex v. Dursley*, 6 T. R. 53), or that

the real estate is taxed ten times more in proportion than the personal (*ib.*), or that the rate is made upon a principle altogether erroneous (*Rex v. Sandwich*, Doug. 562), or that a large portion of property is altogether omitted, and it does not clearly appear who ought to be rated for it (*Rex v. Aberavon*, 5 East, 453), these, says Mr. Nolan, seem cases in which the rate ought to be quashed. Because otherwise the sessions must examine into the circumstances of every person in the parish, in order to render the rate perfect, and so make one altogether new, which the statute forbids. See another ground for quashing a rate *Rex v. Hull Dock Company*, ante, 226.

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&c. under Local
Acts.*

would not oppose the appeal, and it was accordingly allowed without opposition, the rate being quashed on the motion of the appellant's counsel, and costs allowed by the sessions; held that the appellant was entitled to costs as upon an appeal which had been "heard and determined" within the meaning of the stat. 17 Geo. II. c. 38, s. 4. *Bayley, J.* said, "*Rex v. Justices of Essex (ante, 227)*, is perfectly distinguishable from this case; there no appeal was entered. This appeal was heard and determined in the fair sense and meaning of these words. In the first place, as to the hearing: the appellant was bound to prove his notice of appeal before he could entitle himself to costs; and having done so, that would be a hearing. Then, in the second place, the allowance of an unopposed appeal would be a final determination of it, so as to satisfy the statute. It is said that the appellant need not have gone to the sessions, because notice was given four days before that it was not intended to resist the appeal. If notice had been given by the respondents at the same time, that they meant to pay the costs already incurred, then the appellant need not have gone to the sessions, but he is obliged to go there to get his costs." *Holroyd, J.* "By allowing the appeal the sessions determined it. Suppose the justices, notwithstanding the respondent's notice, entertained a doubt as to the propriety of allowing the appeal, and desired to hear what the appellant could say on the subject, would not that be a hearing? Could it be said that was only a hearing on one side, and that both sides must be heard before the costs ought to be allowed? Surely not. I think the order must be affirmed." *Littledale, J.* concurred.

Who may be witnesses.

Rex v. Prosser and others, 4 T. R. 17. On an appeal against a poor rate, because certain persons were omitted to be rated, it was determined that a parishioner who is *liable* to be rated, but who is *not* in fact rated, is a competent witness to prove the rateability of appellants.

Inhabitants not to be incompetent witnesses in certain cases on behalf of or against their parish.

This was before the 54 Geo. III. c. 170, s. 9, which enacts, "that no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter relating to such rates or cesses, any law, usage, statute, or custom to the contrary in anywise notwithstanding." See the decisions in this statute *post*, *Evidence*. (*Meredith v. Griffin*, 6 Price, 146.)

Copies of rates to be entered in a book after appeals determined.

By 17 Geo. II. c. 38, s. 13, it is enacted, that "true and just copies of all rates and assessments hereafter to be made for the relief of the poor, be fairly wrote and entered in a book or books, to be provided for that purpose by the churchwardens and overseers of the poor of every parish, township, or place, who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the churchwardens and overseers of the poor for the time being, or one of them, in some public or other place, in every such parish, township, or place, whereto all persons assessed, or liable to be assessed, may freely resort, and shall be delivered over from time to time to the new and succeeding churchwardens and overseers of the poor as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard or determined."

Rate not removable by certiorari.

Rex v. Uttoreter, 2 Str. 932. Upon great debate and search after precedents, it was held that a *certiorari* would not lie to remove the poor rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniences and delays would follow.

Rex v. The Justices of Salop, 1 Sess. Ca. 201; 2 Str. 975. If a *certiorari* to remove a poor rate into K. B. were allowed, the poor might pending such removal be starved.

15. *Payment of the Rate, and enforcing same by Distress or otherwise.*

The proper mode of enforcing payment of an arrear of poor rate is by *summons*, and distress given by 43 Eliz. c. 2, s. 4, and subsequent statutes; for it is a rule that upon a new statute which prescribes a particular remedy, that is the only one that can be taken. Therefore clearly no action will lie for a poor rate." *Denison, J.* (*Stevens v. Evans*, *post*, 234, 235; *Underhill v. Ellicombe, M'Cl. & Young*, 456.) In one case, however, where a corporation had been rated, and it was doubtful whether there were any distrainable goods, a *mandamus* to pay was issued. (*Rex v. Margate*, 3 Bar. & Ald. 220; 2 *Chitty's Rep.* 356, S. C.) So payment of rates is enforced collaterally by the Reform Act, 2 Will. IV. c. 45, s. 27, and the Municipal Corporation Act, 5 & 6 Will. IV. c. 70, s. 9, and the Vestry Act, 58 Geo. III. c. 69, s. 5, which incapacitate a party rated to vote unless he has paid the rate.

By 17 Geo. II. c. 38, s. 12, after reciting, "that whereas persons frequently remove out of parishes and places without paying the assessed rates on them, and other persons do enter and occupy their houses and tenements part of the year, by reason whereof great sums are annually lost to such parishes and places;" it is enacted, "that where any person or persons shall come into or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay such rate in proportion to the time that such person occupied the same respectively, in the same manner and *under the like penalty of distress*, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportion, in case of dispute, shall be ascertained by any two or more of his majesty's justices of the peace."

By 43 Eliz. c. 2, s. 4, "it shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices of peace as is aforesaid, to levy as well the said sums of money and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, *by distress and sale* of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus; and in defect of such distress, it shall be lawful for any two such justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize until payment of the said sum, arrearages, and stocks."

17 Geo. II. c. 38, s. 7. "The goods of any person assessed, and refusing to pay, may be levied by *warrant of distress*, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

By 54 Geo. III. c. 170, s. 12, it is enacted "that the goods and chattels of any person or persons neglecting or refusing to pay any sum or sums of money legally assessed on and due from him, her, or them in respect of any rate for the relief of the poor, church cess, or highway cess, of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, her, or them, shall and may be distrained, not only within such district, parish, township, or hamlet, but also within any other district, parish, township, or hamlet, within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then upon

15. *Payment of Rate, and enforcing by Distress, &c.*

The remedies to enforce payment of rate.

Persons removing out of parishes to pay a proportion of the rate, enforceable by distress.

Rate to be levied by distress; and if no goods, then may follow commitment.

Goods may be distrained in any part of the county.

If not to be found within the district, &c. may be made out of.

15. *Payment of Rate, and enforcing by Distress, &c.*

oath thereof made before any one or more justice or justices of the peace for any other county, riding, division, or jurisdiction, in which any of the goods or chattels of such persons shall be found, which oath such justice or justices are hereby required to administer and certify, by indorsing in his or their respective handwriting his or their name or names on the warrant granted to make such distress, the goods and chattels of the said person or persons so neglecting or refusing to pay as aforesaid, shall be subject and liable to such distress and sale in such other county, riding, division, or jurisdiction, where the same shall be found; and may by virtue of such warrant and certificate be distrained and sold in the same manner as if the same had been found within the district, parish, township, or hamlet, in or for which such rate or cess had been made or was due."

We have seen that by 41 Geo. III. c. 23, s. 1 (*ante*, 218, 219), that although the rate be quashed, the sums charged are to be levied and taken as payment on account of the next effective rate.

Notice of appeal not to prevent a distress for a sum not greater than that assessed in the last effective rate.

41 Geo. III. c. 23, s. 2. "All and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person or persons so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment for any cause whatsoever: provided always, that if any person rated or assessed in any rate or assessment made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned, to the churchwardens and overseers of the poor of any parish, township, vill, or place, or any two of them, then from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum or sums of money from such person or persons than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place."

If rate quashed, sum charged is not to be paid, and any proceedings to be stopped.

By s. 3. "If the court of general or quarter sessions of the peace shall, upon appeal, order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order any sum or sums of money in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums, not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced: or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid."

The rate to be recovered as altered by the sessions.

By s. 7. "If upon the hearing of any appeal from or against any rate or assessment, the said court shall order the name or names of any person or persons to be inserted therein, and him, her, or them to be rated or assessed at any sum or sums of money, or shall order the sum or sums at which any person or persons is or are therein rated or assessed to be raised or increased, then and in such case all and every the sum and sums of money at or to which such person or persons shall be so ordered to be rated or assessed, or to be raised or increased, or so much thereof as shall not have been already paid, shall and may be recovered in such and the same manner, and by such and the same means as if he, she, or they had been originally named in such rate or assessment, and rated or assessed therein at such sum or sums of money."

A warrant may be made to distrain before the time for which the rate is made is expired. *Charlwood v. Best*, 1 Bott, 261.

A summons must precede a warrant of distress for a poor rate, and without it the Court of K. B. will not issue a *mandamus*.

Before any warrant of distress is granted, the person assessed must be summoned, and if the proceedings are under the 54 Geo. III. c. 170, s. 12, the rate must be demanded seven days before the warrant is granted.

Rex v. Benn, 6 T. R. 198. On a rule for a *mandamus* to the defendants to grant warrants of distress against persons who had refused to pay a poor's rate, it appeared that there had been no previous summons to the persons charged. Lord Kenyon, C. J. "I confess I cannot subscribe my assent to

the decision in *Rex v. Middlesex*. (a) The payment of a poor rate, unless it be set aside, must be enforced; and if the magistrates will not issue a summons to the person who refuses to pay the rate, the court will grant a *mandamus* to compel them to do it: but a summons must precede a warrant of distress, which is in the nature of an execution. On the summons, the party may show a sufficient reason to the magistrates why a warrant of distress should not issue; as, for instance, that he has already paid the assessment to one of the parish officers, who has not accounted for it. But it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard: whereas if a warrant of distress were to be issued without any previous summons, the party would have no opportunity of showing cause why the execution should not issue against him. (b) But the next day the court granted a rule for a *mandamus* to the magistrates "to receive such informations and complaints as shall be laid before them against persons refusing to pay the sums assessed upon them for the relief of the poor of the township of Whitehaven, and to proceed thereupon to levy the same."

Rex v. Stafford, 5 Nev. & Man. 94. Before issuing a warrant it is essential that a justice's summons should have been duly served on the party, or left at his present residence, calling upon him to show cause why a distress warrant should not issue.

If the summons is not obeyed, the refusal to pay must be proved on oath.

In *Tracy v. Talbot*, 2 Salk. 532, per Holt, C. J. "The rate cannot be distrained for by virtue of a general warrant made before the rate: but there ought to be a special warrant on purpose; that is to say, the nonfeasance of the party shall not be left to the judgment of the officer, who may, out of private resentment, sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may show cause variously why a distress should not be granted; as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like."

If the landlord tender the rate for the tenant, no warrant of distress ought to be granted.

Rex v. Cozens, Dougl. 426. On an application for an information against two justices of Dorchester for granting a warrant of distress corruptly, it appeared that the grandson of the owner of the house tendered the rate to the overseer for the owner, and not for the occupier, and the overseer refused to receive it, and the justices granted a warrant against the occupier. The right of voting for members in Dorchester depended on the payment of poor rates. Lord Mansfield, C. J. "It is impossible for the defendants to excuse themselves on account of ignorance. In many parts of the kingdom the landlord pays the rates for the tenants;" and his lordship strongly condemned the issuing of this warrant.

A warrant should not be issued if the parties think there is reasonable ground to believe that the rate is void as regards the person summoned. In such cases the justices may decline to grant a warrant if the rate is question-

15. *Payment of Rate, and enforcing by Distress, &c.*

Summons essential.

Oath of the refusal to pay the rate must be made before the justices, previously to distraining for nonpayment.

If tender by landlord then no distress.

When doubtful whether distress would be lawful mandamus will be refused.

(a) *Rex v. Justices of Middlesex*, 1 Bott, 262. Motion for a *mandamus* to the justices of Middlesex to sign a warrant of distress for levying a poor rate. It was set forth in the affidavit to have been the custom not to grant warrants without first summoning the party to show cause, and that they had refused to grant any warrants of distress, without first summoning the party. Lee, C. J. "A writ of *mandamus* will not give the justices any power they had not before, and therefore it is to be considered what powers stat. 43 Eliz. c. 2, s. 4, gives them; and in that there is no direction that the party shall be summoned to show cause: nothing appears upon the affidavits that this is such a rate as a

distress ought to be granted upon; but the whole is, that persons applying for the warrant did first refuse to take out a summons, which to me does not appear a sufficient cause why the *mandamus* should not go; if the justices have sufficient reason why they did not grant the warrant, it will appear upon the return of the *mandamus*." The other judges concurred. *Mandamus* granted.

(b) This case was cited and approved of by Bayley, B. in *Capel v. Child*, 2 C. & J. 579, where that learned judge says, "I know of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property without his having an opportunity of being heard."

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Rate for lands not in the party's occupation is void.

So also for lands not of the parish.

Rated inhabitant cannot resist the rate in an action, though he had no rateable property.

Insufficient description of property furnishes no answer to a distress.

If one warrant is granted for several rates, and one of them has been quashed, the warrant is void.

The precise sum due should be demanded previous to the issuing of the warrant.

able. *The Court of King's Bench will not compel them(a) to enforce it.* If the objection to the rate however is one of which the party can avail himself by appeal only, then the *mandamus* will be granted.

No warrant ought to be granted where a person is assessed for lands which were *not in his occupation*, notwithstanding it had been confirmed on appeal. For the determining that a man may be assessed for what he does not occupy, is an excess of jurisdiction. (*Milward v. Caffin*, 2 Bla. Rep. 1330.) And in such a case *trespass* lies for the illegal seizure. (*Durant v. Boys*, 6 Term R. 580.)

So also where the party is assessed for some houses which he occupies, and others which he does not, he may dispute the legality of the rate as to the latter in an action. (*Governor of Bristol Poor v. Waite*, 1 Ad. & E. 264.)

Nor where the assessment is for land in another parish, for that is an illegal tax, which the justices have no power to confirm. (*Weaver v. Price*, 3 B. & Adol. 406.)

But the rate may be enforced by distress, if the rate is not a nullity, and the justices had jurisdiction to allow the assessment. In *Pitman v. Marshall* (9 Bing. 595), the plaintiff had been rated for his stock in trade, and the special case stated that the plaintiff had no personal property or stock in trade for which he was liable to be rated, unless his stock of drugs, &c. which he had as an apothecary, rendered him rateable. And it was held that as the plaintiff was an inhabitant of the parish possessing visible personal property, he was within the jurisdiction of the justices, and liable to be rated, although his rateable property might turn out to be worth nothing.

The want of a sufficient description of the property rated cannot be made the ground of objection to a distress for a rate. It can be made by appeal only. (*Rex v. Wilson*, 5 N. & M. 116; *Curtis v. Kent Water Works Company*, 7 B. & C. 314; *Hutchins v. Chambers*, 1 Burr. 580.)

Hurrell v. Wink, 2 B. Moore, 417; 8 Taunt. 369, S. C. This was an action of replevin, and the defendant avowed as overseer of the parish of Rayleigh. It appeared that a warrant of distress was granted against the plaintiff on the 9th of January, 1817, and executed on him on the 13th, for 104*l.* 17*s.* due for seven several poor rates and assessments. The plaintiff appealed to the Epiphany sessions, but was not in sufficient time as regarded six of the rates mentioned in the warrant. The sessions quashed the last rate, on the ground that the plaintiff was not the occupier. *Milward v. Caffin* (2 Bla. R. 1330), was cited, which was an action of replevin on a distress for a poor rate; and there it was held, that where a warrant was to levy an aggregate sum, composed of several rates, if one of the rates were illegal, the whole warrant was void. *Gibbs*, C. J. "It was necessary that the sum actually due from the plaintiff for poor rates should be demanded previous to the issuing of the warrant of distress, and that it was distinguishable from a distress for rent; that whatever might be due as the amount of rent might be distrained, and that although a larger sum were distrained for than was actually due, that the lessor might still be supported; as if a distress were made for three years' rent, and two only were due, still the avowant was entitled to recover for the two. So if a person bring an action for goods sold and delivered to the amount of 100*l.*, still he may only be entitled to recover 40*l.* But in neither of these cases is a precise and previous demand necessary as here, where the party distrained on is entitled to know what sum is actually due for poor rates, previous to the issuing of the warrant under which the levy is made." Verdict entered for the plaintiff.

(a) It is a general rule that where magistrates have been called on to exercise their judgment upon the propriety of granting a warrant, the Court of King's Bench will not interfere, especially where there is a probability that an action will be brought against them upon such warrant. (*Rex v. Margate*, 3 Bar. & Adol. 220; 2 Chit. R. 250, S. C.; *Rex v. Dyer and Hall*, 2 Adol. & El. 613; 4 Nev. & Man. 546; 1 Har. & Wol. 83, S. C.; *Rex v. Somersetshire*, 4 Nev. & Man. 394;

1 Har. & Wol. 82, S. C.; 1 Chitty's Gen. Prac. 802, 803.) It was observed (*Rex v. Dyer*, 2 Ad. & E. 613), that it was a pity that acts of parliament relating to the poor rates did not contain a clause indemnifying magistrates for what they did in obedience to the mandate of the court; the court would then take upon itself to see whether the thing required were within the provisions of the act. (See *Rex v. Greame*, *ib.* 615; *Rex v. Morgan*, *ib.* 618.)

In these cases there was only one warrant, and that authorized a distress for a good and bad rate; but where *several* warrants were granted against defendant, who was liable to be rated for some of the premises, but not others, the distress may be excessive, but the seizure is legal. (*Governor of Bristol Poor v. Wait*, 3 Nev. & Man. 359; 1 Ad. & E. 264.)

Bell v. Oakley, 2 M. & Sel. 259. Under a warrant granted to distrain the plaintiff's goods for nonpayment of a poor rate, the defendants knocked at plaintiff's door, and being informed at the next house that the plaintiff was from home, one of the defendants tried to get in at the cellar, but failed; they then took the fastening out of a window, and got into the washhouse. After continuing there some time, and having found nothing within, the inner door being locked, they returned, and took away some planks and other articles which were lying in the garden. A verdict was found for the plaintiff, with leave to enter a nonsuit, on the ground of there not being any proof of a demand of the copy of the warrant, as required by 24 Geo. II. c. 44, s. 6. Lord Ellenborough, C. J. "The case of *Money v. Leach* (3 Burr. 1742; 1 Bla. 555), decides that the defendant, in order to avail himself of the objection upon the statute, must show that he acted in obedience to the warrant; in that case the officers apprehended a different person from that described in the warrant, and therefore not in obedience to the warrant; and Mr. Yorke, the then attorney-general, who was to have argued on behalf of the officers, gave up the point upon the second argument, as being too great a difficulty for him to encounter. Here the defendants, so far from showing that they acted in obedience to the warrant, commence by an unauthorized course of proceeding; it was a trespass in them *ab initio*; and I do not see how, after the case of *Money v. Leach*, they can stir this objection. That was a case of much public interest, and was decided upon great deliberation, and the matter was upon the record. If this had been a distinct subsequent trespass of the defendants, it might have presented a different question." Bayley, J. "In *Price v. Messenger* (2 Bos. & P. 158), the defendant, so far as he acted in obedience to the warrant, was under the protection of the statute, but he was holden liable for the seizure, which was not made in obedience to the warrant." Dampier, J. "The case of *Money v. Leach* decided, that where the justice cannot be liable, the officer is not within the protection of the statute. In this case, suppose notice had been delivered to the justice, for what could he have tendered amends? In *Price v. Messenger*, the justice might have been proceeded against upon the warrant." Rule discharged.

Novello v. Toogood, 1 B. & C. 554; 2 D. & R. 833. Where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings, the Court of King's Bench held that his goods in that house, not being necessary for the convenience of the ambassador, were liable to be distrained for poor rates. Abbott, C. J. "I do not know how the privileges of an ambassador can be better defined than by laying it down as a principle that they extend only to what is necessary to the personal convenience, the dignity and the religion, of the ambassador himself." (2 D. & R. 837, S. C.)

And by 17 Geo. II. c. 38, s. 8, 9, 10, "Where any distress shall be made for any sum or sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers, on account of any defect or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs. Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs. Provided nevertheless, that no plaintiff or plaintiffs shall recover in any action for any such irregularity as

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Several warrants and one seizure is not void.

Under a warrant of distress, defendants broke and entered the house: Held, that they were not acting in obedience to the warrant, and therefore not entitled to the protection of 24 Geo. II. c. 44, s. 6.

Distress shall not be deemed unlawful for want of form in the proceedings.

15. *Payment of Rate, and enforcing by Distress, &c.*

Commitment for want of distress.

What may be taken.

Money.

Only the goods of the party assessed can be taken.

Quære, Whether goods of party assessed in hands of executor can be taken. At all events the executor must be first summoned. (a)

No action of debt lies for a poor rate.

aforesaid, if tender or amends hath been made by the party or parties distraining before such action brought."

By 43 Eliz. c. 2, s. 4, "In defect of such distress it shall be lawful for any such two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize until payment of the said sum, arrearages, and stock."

As a distress for a poor rate is analagous in some respects to an execution, beasts of the plough are distrainable, though there may be sufficient goods without them (*Hutchins v. Chambers*, 1 Burr. 579); and working tools in a shop. (2 Show. 126.) And yet *replevin* lies. (*Sabourin v. Marshall*, 3 Bar. & Adol. 440.)

So also it seems money. But *quære*. (*East India Company v. Skinner*, 1 Bott, 257.)

The goods only of the party assessed can be taken under the distress. The 43 Eliz. c. 2, s. 4, (*ante*, 229,) enacts, &c. "by distress and sale of the offender's goods." The 17 Geo. II. c. 38, s. 7, (*ante*, 229,) says, "the goods of any person assessed." It is otherwise as to the assessed taxes, for which any goods on the premises may be distrained. (*Stevens v. Evans*, 2 Burr. 1152; *Juson v. Dixon*, 1 M. & S. 601.)

If the person charged shall die before payment, it has been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer the same. In *Stevens v. Evans* (2 Burr. 1152; 1 Bla. Rep. 284), *W. Vesey* was assessed to the poor rate, and died intestate. Administration was granted to the plaintiff. After which two justices executed a warrant, in which it was recited, that the sum assessed had been demanded of *Vesey*, and (since his decease) of his widow; and then it required the officer to distrain the goods and chattels of the late *William Vesey*. An action was brought by the administrator, and a special case was stated, and the question was, whether the distraining the cattle, which were the goods of *Vesey*, in the hands of his administrator, was lawful or not? Mr. Justice *Denison* said, "The question is stated particularly upon this case, and is confined to the levying the money upon the representative of the person charged. I should think the event must have often happened in fact and experience. The practice is not stated. But, however, the question is, what the law is? and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken but the particular remedy prescribed by the statute. Therefore, clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 Eliz. must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay as an offender, and gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained, by the words of this act, but the goods of the offender himself. I never apprehended that the goods of the person assessed to the rate can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action will lie for taking them. I agree that this is in the nature of an execution; but yet it is personal: and I do not know that it is a *lien* upon the assets." Mr. J. *Wilmot* said, he had no doubt about it. It is not stated in the case that a demand was made even upon *Vesey* (the person assessed), and that he refused payment, though it is so recited in the warrant; but that is not material; for I have not the least doubt but that the representative ought to have been convened before the justices, and asked what he had to say why he should not pay the rate assessed upon *Vesey*, his intestate. The case seems to be like a *scire facias* upon a judgment; upon which execution cannot be sued out against the representatives, without asking them what they have to allege why it should not be taken out. At the time of the *teste* of the warrant, they were the goods and chattels of the representative. If the *teste* had been prior to the death, they would have been the goods and chattels of the deceased; but if tested after his death, they are not his goods and chattels, but the goods and chattels of the representative: therefore, if the money had been demanded of the representative, I should have had great doubt whether this warrant and

(a) See 2 Williams on Executors, 1083.

distress would not have been good; for I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at; for though it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And though he be called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate; though I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In *Wallis and Hewit*, at the sittings after H. T. 5 Geo. II., before Lord C. J. *Eyre*, in an action of trespass, two aldermen of London had made a warrant to distrain a man for a poor rate. The man died intestate; but before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal; and then he died. *Eyre*, C. J. held, that a distress could not be made after his death; or, if it could, yet the representative ought to have been summoned: and he held the property to be changed. A case was made, but I could not hear what became of it: Lord C. J. *Eyre* was a great lawyer. It would be strange that a distress should be taken upon a man's goods without hearing him, and it would make great confusion in the administration of assets: he may have paid or retained judgment debts, prior to this distress for the rate." Mr. *Gould* said, that if the want of a demand from the representative was insisted on, he could not pretend to maintain the case. Mr. *J. Denison* and Mr. *J. Wilmot* said, that this was an essential circumstance. And by the Court (Lord *Mansfield*, C. J., and Mr. *J. Forster*, being absent,) judgment was given for the plaintiff.

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When a distress was wholly illegal the owner of the goods may support an action of *trespass* or *trover*, or may *replevy*; or if the sheriff refuse to replevy on tender of a sufficient replevin bond, he is liable to an action on the case. (*Sabourin v. Marshall*, 3 Bar. & Adol. 440.) *Case* is the remedy when there has been a seizure under several warrants, one of which is defective. (*Governor of Bristol Poor v. Wait*, 1 Adol. & El. 264; and see further, *ante*, 232.)

Remedies for an illegal distress.

16. Rate for Taxing others in Aid.

By 43 Eliz. c. 2, s. 3, "If the said justices of peace do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, that then the said two justices shall and may tax, rate, and assess, as aforesaid, any other of other parishes, or out of any parish, within the hundred where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parish, for the said purposes, as the said justices shall think fit, according to the intent of this law: and if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices of peace, at their general quarter sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the said county, for the purposes aforesaid, as in their discretion shall seem fit."

16. *Rate for Taxing others in Aid.*

Anon. Fol. 25; 1 *Nol. P. L.* 241. In one parish there were two villis, and the justices recite in their order that one of the villis was very rich, and the other very poor; and further, that the vill which was rich did not pay half so much to the poor as the poor vill did. Objected, one vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because they do not pay half so much as the poor vill does, with-

A vill is within the equity of the statute.

16. *Rates for Taxing others in Aid.*

One of several incorporated parishes may be taxed in aid.

The sessions cannot rate in aid.

The assessment must be by the justices, and they cannot order the overseers to do it.

Mandamus to make such rate.

The rate in aid may be on particular persons.

The parishes must be in the same hundred.

And so it must appear in the order.

Any division

out showing that either vill pays anything to the poor. By the Court: "As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of *parishes*; and it is highly reasonable that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty."

Rex v. St. Helen's, Worcester, 2 East, 417. An order for taxing one parish in aid of another was held well; although the two parishes, together with others, were incorporated for the maintenance of their poor, with fixed quotas of contribution between each other, under special officers, who were empowered to purchase land for the erection of poor houses, and for a burial ground; there being a proviso in the act, that nothing therein should repeal or lessen the power of justices "to tax *parishes* in aid of others by virtue of the 43 Eliz. as fully as if this act had not been made."

Rex v. Griesley, Sett. & Rem. 259. The sessions rated the adjacent parishes: quashed; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. (See *Dimchurch v. Eastchurch*, 2 Salk. 480.)

St. Mary's v. St. Peter and Paul's, in Marlborough, 2 Str. 1114; 1 Bott, 406. Two justices order the overseers of *St. Peter and Paul's* to levy a sum towards the maintenance of the poor of *St. Mary's*. But the order was quashed by the Court; because the justices had delegated their power to the overseers: whereas by the statute they themselves are to make the rate on all, or on particular persons.

In this case a *mandamus* was moved for to the justices, to make a rate for the support of the poor of the parish of *St. Mary's*, which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on *this clause* of the statute; and thereupon a *mandamus* was granted, directed to the justices; and as this is a matter of right, they ought to make a return. (16 Vin. Abr. 416.)

The justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. (2 Salk. 480.)

Resolved, that the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. (Comb. 309; 1 Vent. 350; Fol. 29.)

Either particular persons, or the whole parish, (*Dimchurch v. Eastchurch*, 2 Salk. 481,) may be charged.

It has been decided also, that it should appear by the order that the place on which the rate is made is not within the parish in aid of which it is assessed, and that this is necessary, although the names of both appear on the face of the order and are different. (*Rex v. Boroughfen*, 1 Nol. P. L. 246.)

But in *Rex v. St. Helens*, 1 Nol. P. L. 246, (n.), the above was cited to this point, when Lord Ellenborough, C. J. observed, that the diversity of name imports diversity of place, unless the contrary be shown. And see *Anon.* Fol. 25, ante, 235.

Rex v. Boroughfen, Fol. 29; 1 Barnard. B. R. 122. There was a taxation of several persons in a parish: objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable that several persons in a parish should be charged, and not all, but that the words of the act are very strong: and did not quash the order for this objection.

St. Benedict v. St. Peters, Fol. 31; 1 Bott, 409; 1 Nol. P. L. 246, 247; 11 Mod. 269. Motion to quash an order made to assess the parishes of *St. Stephen* and *St. Mary Magdalen*, in *Norwich*, in aid of the parish of *St. Benedict*, which was not able to maintain its own poor. Objection: these parishes are not in the same hundred; they are in the county of the city of *Norwich*, where there is no hundred, so the justices have no jurisdiction, though the sessions have in such case. Order quashed.

In *Boroughfen v. St. Jones* (Fol. 27, 31; 1 Bott, 402; 1 Nol. P. L. 245, 246), it did not appear upon the order that the parish which is charged to aid the other parish is within the same hundred. And it was quashed by the whole court.

Rex v. The Tithing of Milland, 1 Burr. 576. Two justices tax the in-

habitants of the tithing of *Milland* in aid of the parish of *St. Peter's, Cheesehill*, in the same county. The sessions confirm the order, setting forth that the tithing of *Milland* and the parish of *St. Peter's Cheesehill* both lie in the same *liberty of the soke* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, though called by another name. And the court held they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed.

In *Rex v. T. Holbeche, Esq. and another* (4 T. R. 778), it was determined that county justices cannot rate a parish within their jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction.

Rex v. St. Mary's in Marlborough, 2 Stra. 700; 1 Bott, 406; 1 Nol. P. L. 250. An order was made for a neighbouring parish to contribute *so long as we the said justices shall think fit*. But by the court: it must be quashed; for the discretion that is left in the justices is not to make a perpetual order, which this would be.

Rex v. Knightly, Comb. 309; 1 Bott, 399; 1 Nol. P. L. 245. A sum in gross was taxed upon a neighbouring parish for a whole year, which was objected to as unreasonable, because their ability may change; nevertheless the order was confirmed.

Rex v. Telscombe, 1 Stra. 314; 1 Bott, 403; 1 Nol. P. L. 245. By the court: the order for the contributory parish to make a rate at 6d. in the pound is ill for uncertainty; it should have been to raise such a sum certain. Quashed.

St. Peter and Paul in Marlborough, 2 Stra. 1114; 1 Bott, 406; 1 Nol. P. L. 244. Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and St. Paul* to contribute 60*l.* for the maintenance of the poor of the other parish. An objection being made to their ordering such a gross sum, the court held it in that respect to be well.

And by stat. 43 Eliz. c. 2, s. 3, if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices at their general quarter sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the county, &c.

Rex v. Percivall, 1 Stra. 56. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred. It was insisted that the statute gives no authority to the sessions to charge people out of the hundred till two justices have inquired whether any parish in the hundred can contribute. *Parker, C. J.* "I do not see to what purpose it would be for the two justices to make an order only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appear which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred. *If the said hundred shall not be thought by the said justices able*,—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet, if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication." *Eyre, J.* "Here are two jurisdictions, that of the two justices and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from any adjudication of two justices, for that would be to appeal from a nullity." And the order was confirmed.

Rex v. Eastchurch, 1 Bott, 410. It was decided by *Holt, C. J.* that the sessions cannot make an original order on a parish within the hundred.

16. Rate for Taxing others in Aid.

which is equivalent to a hundred is within the equity of the statute.

Justices cannot rate in aid of a parish out of their jurisdiction.

The order must be for a time limited.

The sum may be imposed in gross for a year.

The order must be to raise a sum certain.

The sum may be in gross.

County contributory.

The sessions may charge parishes out of the hundred, although two justices have not adjudged that the parishes within the hundred are unable to contribute.

CHAPTER III.

OF THE ACCOUNTS OF OVERSEERS AND GUARDIANS.^(a)

1. *What Accounts to be rendered, and of passing same, 238.*
2. *Disallowance and Reductions in Accounts, 245.*
3. *Reimbursing Overseers, 246.*
4. *Delivering over Balance, Books, Chattels, &c. 247.*
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1. Of Overseers' Accounts, what to be delivered, and passing same.

Accounts of monies received under different statutes to be kept, examined, and passed.

1. Of Overseers' Accounts, what to be delivered, and passing same.

THE funds which are placed at the disposal of the parish authorities, for the provision of the poor, though arising chiefly from rates, are augmented by receipts from various sources besides the poor rates, which render it expedient that detailed accounts should be kept, and that they should be balanced and passed at different periods. Thus, the churchwardens and overseers are to account to the quarter sessions for all monies which they may receive under 5 Geo. I. c. 8, authorizing levies on the property of husbands and parents who leave their children on the parish; and for what they may receive under 17 Geo. II. c. 20, authorizing levies in certain cases on the property of lunatics. And see 7 Jac. I. c. 3, as to accounts of monies *charitably* given to bind out apprentices.

By the militia act, 43 Geo. III. c. 47, s. 21, the overseers were directed to give an account of allowance made to militia men, &c.; but by the 60th section of 4 & 5 Will. IV. c. 76, so much of the statutes that required relief to be given to the wives and families of substitutes, hired men, or volunteers in the militia, are repealed.

Guardians' accounts.

Accounts, how kept and produced at monthly meetings, and proportions determined.
(i. e. the monthly meetings of guardians, *ante*, s. 24.)

Proportion for each parish.

At the monthly meeting required by the 24th section of 22 Geo. III. c. 83, it is by the same section enacted, "That the treasurer shall produce, fairly written, one account of the debt incurred in the preceding month, for utensils and materials for the purpose of manufacture, and for furniture, alterations, or repairs of the buildings, and also for the salary or allowance to the governor or treasurer, and servants (if any), in which account the rent of such house or houses, buildings, and premises, if the same shall be rented, shall be charged in the month next after such rent shall become due, according to the terms of the agreement for taking the same; which account, when settled and agreed to, shall be signed by the said guardians attending such meeting: and the sums to be paid by each of such parishes, townships, and places, on that account, shall be settled and adjusted at such meeting, in proportion to the sums paid by each of such parishes, townships, and places, on account of their poor, on a medium of three years next preceding the date of such agreement (to be settled and ascertained at such first monthly meeting, in the manner to be specified by the said agreement so to be entered into for uniting as aforesaid, and according to the mode or form and table

(a) See fully the valuable communication circulated from the Poor Law Commissioners' Office, Somerset House, 1st March, 1836, to overseers, directing

them how to keep and return their accounts; and a circular to auditors of accounts, 25th June, 1836, *post*, Appendix.

contained or referred to in the said schedule, No. XV.) and in like manner, and in the like proportions, at every succeeding monthly meeting; and the money shall be then, or within one week after, paid into the hands of the said treasurer, to be by him applied in discharge of the several articles and debts contained in such account: and the said treasurer shall also at the same time produce, fairly written, one other account of the victuals, beer, firing, and other necessities, for the use and maintenance of the poor, and of the governor, at such house or houses, and all other incidental expenses; which shall be then accounted for and proportioned by the said guardians according to the number of persons which shall have been sent from each of the said respective parishes, townships, and places, and for the time they shall have resided in such house or houses within such month, according to the mode or form and table, and in the manner for that purpose also mentioned in the said schedule No. XVI.; and the sum due from each parish, township, or place, shall be specified at the foot of such account, which shall, when settled and agreed to, be signed by such guardians or the major part of them, and be afterwards inspected by the visitor, if not a guardian, and allowed by him, if he shall approve thereof; and in case default shall be made in payment of the respective sums so proportioned to be paid in respect of any such parish, township, or place, for seven days after the same shall be so settled and proportioned, and the money demanded, it shall and may be lawful for any justice of the peace for the limit where such house or houses shall be situate, upon complaint made to him upon oath of such default, to levy the said respective sums to be settled and proportioned as aforesaid, by distress and sale of the goods and chattels of any guardian of the poor for any such parish, township, or place, making such default; and at the end of every year the account shall be finally closed, and the balances paid and received, according to the mode prescribed by the said schedule No. XVI."

Rex v. Great Farringdon, 9 B. & C. 541. A rated parishioner has a right to inspect the accounts of the expenditure of the parish, kept by *guardians* of the poor, appointed under the 22 Geo. III. c. 83. Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reason for inspecting the books. He has a right to see what has been done, and the Court of King's Bench will grant a *mandamus*, commanding the guardians, &c. to allow such inspection. *Ante*, 213.

By the 4 & 5 Will. IV. c. 76, s. 47, it is enacted, "That every person having the receipt or distribution of the monies assessed for the poor in any parish or union, or holding any books or goods relating thereto, shall once in every quarter, in addition to the annual account now by law required, and where the rules of the commissioners shall have come in force, then as often as the said rules shall direct, but not less than once in every quarter, render to the guardians, auditors, or other persons as by any statute or custom, or the said rules, may be appointed to audit such accounts, or in default of any such guardian, auditor, or other person being so appointed, then to the justices at their petty sessions, an account in writing of all monies and things committed to their charge, or received or expended by them on behalf of any such parish or union, and if required shall verify on oath the truth of the same, or subscribe a declaration to the truth thereof; and all balances due may be recovered in the same manner as any penalties and forfeitures are recoverable under this act: the proceeding not to exonerate surety."

Where a union has been formed, the 28th rule of the commissioners requires the guardians to appoint a competent person to be auditor of the accounts; and such auditor shall, four times in every year, that is to say, within thirty days after Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, audit the accounts of the union and of the parishes comprised therein, according to the laws in force for the time being for the administration of the relief of the poor. A form of certificate of allowance is given.

The accounts above enumerated are independent of and distinct from the *final* account which the overseers are bound to make at the expiration of their office.

The 7 Jac. I. c. 3, which entrusts them with the disposition of charitable

1. Overseers' Accounts, delivering and passing same.

To be paid to treasurer.

Account of food, &c.

Default of payment.

Distress on the guardian.

A rated inhabitant has a right to inspect guardians' accounts.

Overseers, &c. to pass accounts quarterly, in addition to the annual account.

Recovery of balances.

Guardians of unions to appoint an auditor, who shall audit the accounts quarterly.

1. Overseers' Accounts, delivering and passing same.

donations given for the binding out of apprentices in places not corporate, requires that they shall, once every year in Easter week, or within one month after Easter-day, make a true and perfect account before two or more justices of all sums employed by them in binding apprentices under that act, and of all bonds and obligations for payment of such sums, and of all monies remaining in their hands not employed; and at (or within ten days after) making the account, deliver to their successors all such obligations, bonds, and money remaining unemployed.

Final account.

But the most material is the *final* account with the parish; which overseers and their executors are enjoined to make up and pass *at the expiration or other sooner determination of their office*.

Accounts on going out of office to be submitted to justices.

By 43 Eliz. c. 2, s. 2, "The churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices of peace, or more, as is aforesaid, shall meet together at the least once every month in the church of the said parish, upon the Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premises; and shall within four days after the end of their year, and after other overseers nominated as aforesaid, make and yield up to such two justices of peace as is aforesaid, a true and perfect account of all sums of money by them received, or rated and * sessed and not received, and also of such stock as shall be in their hands or in the hands of any of the poor to work, and of all other things concerning their said office; and such sum or sums of money as shall be in their hands, shall pay and deliver over to the said churchwardens and overseers, newly nominated and appointed as aforesaid; upon pain that every one of them absenting themselves without lawful cause as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace, or any two of them before mentioned, to forfeit for every such default of absence or negligence, twenty shillings." See also 50 Geo. III. c. 49, s. 1 (*post*, 241, 242).

* Sic.

Proceedings for arrears.

Sect. 4. "It shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices of peace as is aforesaid, to levy as well the said sums of money and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus; and in defect of such distress, it shall be lawful for any such two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize, until payment of the said sum, arrearages, and stock: and the said justices of peace or any of them, to send to the house of correction or common goal such as shall not employ themselves to work, being appointed thereunto as aforesaid; and also any such two justices of peace to commit to the said prison every one of the said churchwardens and overseers who shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands."

And the 17 Geo. II. c. 38, enacts as follows on this subject:

Parish officers shall make up and deliver their accounts to their successors.

The requisites of such accounts.(a)

Sect. 1. "The churchwardens and overseers of the poor shall yearly and every year, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers a just, true, and perfect account in writing, fairly entered in a book or books to be kept for that purpose, and signed by the said churchwardens and overseers hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed and not received, and also of all goods, chattels, stock, and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid

(a) See *Walrond's case*, 1 Bott, 300; and *Rex v. Corrocke*, 1 Show. 395; 1 Bott, 310, *post*.

by such churchwardens and overseers so accounting, and of all things concerning their said office. And shall also pay and deliver over all sums of money, goods, chattels, and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said accounts shall be verified by oath, or by the affirmation of persons called Quakers, before one or more of his majesty's justices of the peace, which said oath or affirmation such justice or justices is and are hereby authorized and required to administer, and to sign and attest the caption of the same at the foot of the said account, without fee or reward. And the said book or books shall be carefully preserved by the churchwardens and overseers, or any of them, in some public or other place in every parish, township, or place; and they shall and are hereby required to permit any person there assessed, or liable to be assessed, to inspect the same at all seasonable times, paying sixpence for such inspection; and shall, upon demand, forthwith give copies of the same or any part thereof to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number." (a)

Sect. 2. "In case such churchwardens and overseers of the poor, or any of them, shall refuse or neglect to make and yield up such account, verified as aforesaid, within the time hereinbefore limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels, and other things in their hands, as by this act is directed; in either of the said cases, it shall and may be lawful to and for any two or more justices of the peace to commit him or them to the common gaol until he or they shall have given such account, or shall have paid or yielded up such monies, goods, chattels, and other things in their hands as aforesaid."

By 50 Geo. III. c. 49, s. 1, after reciting 43 Eliz. c. 2, s. 2, and 17 Geo. II. c. 38, s. 1, and that two or more justices should be empowered to examine and correct, and to allow and approve every such account before the same shall be signed and attested, it is enacted, "that in all cases where any such account is required to be made and yielded, and to be signed and attested as aforesaid by virtue of the said last recited act, every such account shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, dwelling in or near the parish or place to which such account shall relate, at a special sessions for that purpose to be holden within the fourteen days appointed by the said last recited act for delivering in such account; and such justices shall and they are hereby authorized and empowered, if they shall so think fit, to examine into the matter of every such account, and to administer an oath or affirmation to such churchwardens and overseers of the truth of such account, and to disallow and strike out of every such account all such charges and payments as they shall deem to be unfounded, and to reduce such as they shall deem to be exorbitant, specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same is disallowed or reduced; and it shall be lawful for such two or more justices, and they are hereby required to signify their allowance and approbation of any such account under their hands, and to sign and attest the caption of the same at the foot of such account, in manner directed by the said last recited act: and in case such churchwardens and overseers or any of them shall refuse or neglect to make and yield up or to submit such account, or to verify the same by oath as aforesaid, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such account in manner aforesaid shall appear to be remaining in the hands of such churchwardens or overseers, it shall and may be lawful for any two or more justices of the peace to commit him, her, or them, to the common gaol, until he, she, or they shall have made and yielded such account, and verified the same as aforesaid, or shall have delivered over such goods, chattels, and other things which shall appear to be so remaining

1. *Overseers' Accounts, delivering and passing same.*

Books may be inspected, paying 6d., and copies taken, paying 6d. for three hundred words.

Penalty on parish officers not accounting as this act directs.

Accounts of churchwardens and overseers of the poor to be submitted by them to two or more justices at a special sessions.

Penalty for neglect, &c.

(a) This provision applies to the guardians of the poor. See *Rex v. Great Farrington*, 9 B. & C. 541.

1. *Overseers' Accounts, delivering and passing same.*

in his, her, or their hands as aforesaid; and in case such churchwardens or overseers, or any of them, shall refuse or neglect to pay to their successors, within fourteen days from the signing and attesting such account, any sum or sums of money or arrearages which on the examination and allowance of such account in manner aforesaid shall appear or be found to be due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, it shall and may be lawful for the subsequent churchwardens and overseers, by warrant from any two or more justices of the peace, to levy all such sum or sums of money by distress and sale of the offenders' goods, rendering to the parties the overplus; and in default of such distress, it shall be lawful for any such two justices of the peace to commit the offender or offenders to the common gaol of the county, there to remain without bail or mainprize until payment of such sum or sums of money or arrearages as aforesaid.

The above provision, by s. 6 of the same statute, is restrained from affecting parish officers exempted under local acts from rendering such accounts.

It is discretionary with the justices to commit an overseer refusing to account.

It is not imperative on the justices to commit an overseer who refuses to account. A very old and infirm man was elected churchwarden, but never sworn in, and although he signed the poor rates, he had never interfered in their collection, or received any of the parish monies. He rendered no accounts, but the justices refused to commit. On an application to the King's Bench for a *mandamus* to compel them to commit, it was held, that although it was the duty of the party to render some account, as the statute required an account of monies rated and assessed and not received, and of all things concerning the office, yet the statute does not *compel*, but only *authorizes* the justices to commit, and as the justices had exercised a discretion, the rule as to them was discharged with costs. (*Rex v. Justices of Norfolk*, 4 B. & Ad. 238; 1 Nev. & Man. 67.)

The 50 Geo. III. c. 49, which requires churchwardens and overseers to submit their accounts to two justices at special sessions within the fourteen days appointed by the 17 Geo. II. c. 38, for delivering in the said accounts to the succeeding overseers, is not a *substitution* in lieu of that provision in the 17 Geo. II. but is *cumulative*; and if the overseer refuse to deliver in such accounts to the succeeding overseers within the fourteen days, he may be committed.

Lester's case, 16 East, 374. Lester, late overseer of Paddington, was in custody under a warrant by two justices for not delivering in his accounts to the succeeding overseers within fourteen days from their appointment. It was contended, that the 50 Geo. III. c. 49, which directs the accounts to be submitted to two justices at a special sessions, within the fourteen days appointed by the 17 Geo. II. c. 38, was substituted for the obligation to deliver them over to the succeeding overseers. By the 50 Geo. III. the overseers who refuse or neglect to submit the accounts to the justices, are made liable to be committed; if, therefore, they have fourteen days allowed them for submitting their accounts to the justices, how can they be required within that time to deliver them over to the succeeding overseers? The duty imposed by one act is inconsistent with and would interfere with the other. Lord Ellenborough, C. J. "The provision in the 50 Geo. III. seems rather to apply to the manner of examining the accounts when yielded, leaving the accounts still as before to be delivered over to the succeeding overseers; but they are also within the fourteen days to be submitted to the justices for examination. An ulterior means is afforded of investigating them before the justices; the act only means that they shall be exhibited to the justices; it is, therefore, for a different object. It is very expedient that the succeeding overseers should have the accounts delivered in to them immediately from the former overseers, which is the object of the 17 Geo. II.; then the 50 Geo. III. directs that the account so to be delivered shall be submitted to the justices to be examined and approved by them; that, therefore, is manifestly cumulative." *Le Blanc*. J. "The churchwardens and overseers are to deliver in to the succeeding overseers their accounts verified on oath before one or more justices, who are to sign and attest the same; that is provided for by the 17 Geo. II. By the subsequent act, the accounts are to be submitted to two or more justices at a special sessions; and power is given them to examine and approve such accounts, and they are required to signify their approbation of them under their hands, and then to sign and attest as directed by the former act. This provision, therefore, is perfectly consistent with the provision in the former act."

Rex v. The Justices of Colchester, 5 B. & A. 535; 1 D. & R. 146; and 1 D. & R. Mag. Ca. 51. On a rule nisi for a *mandamus* to enter continuances and hear an appeal against the overseers' accounts, it appeared that the accounts had on the 14th May been duly allowed by two justices, pursuant to 17 Geo. II. c. 38, at a petty sessions; but they had not been examined and allowed at a *special sessions*, pursuant to 50 Geo. III. c. 49. The sessions dismissed the appeal, on the ground that they had no jurisdiction. *Per Curiam*—"We are quite satisfied that the sessions had jurisdiction, and they ought to have heard the appeal." Rule absolute.

Goff's case, 3 M. & Sel. 203. Goff was committed for that he having been collector of the rates for Richmond, refused to account and pay over the monies collected by him to W. S., the person duly authorized to receive them; and he was committed until he should have made a true and fair account, and until such money as upon the said account should appear to be remaining in his hands should be paid to W. S., and the keeper of the gaol was required to keep him until he should be discharged by due course of law. It was contended that the warrant was void for directing the detention till he should be discharged by due course of law. Lord Ellenborough, C. J. "If there was any uncertainty on the face of the commitment, I should have agreed with the argument; but coupling the premises with the conclusion, is it not in effect the same as if the warrant had directed the gaoler to detain the party until he had accounted? We must read the warrant as if the magistrates had in the conclusion recited over again the adjudication." *Le Blanc, J.* "Some precise authority ought to be shown to justify the court in adopting the objection made to this warrant. When the party has accounted and paid over the money, he will be entitled to be discharged by due course of law." The prisoner remanded. (This case qualifies that in *Carthew*, 152, *post*, 250.)

Justices cannot commit a man for not accounting before the time allowed for rendering an account has elapsed. The accounts cannot be withdrawn from the two justices to whom they were first submitted, for the purpose of referring them to others, and if this be done, the allowance or disallowance of such others is void, and any unreasonable delay by such justices may be corrected by an application to K. B. But although the sessions cannot delegate their authority, they may remit such accounts to such two justices before whom they were first laid, as that is merely desiring them to execute their original authority. (*Rex v. Townsend, Bott*, 323; S. C. *Vin.* 417.) This was before 17 Geo. II. c. 38.

Rex v. The Justices of Middlesex, 1 Wils. 125; 1 Bott, 317. A *mandamus* was granted to swear Carr, late overseer, to the truth of his account, upon an affidavit made by Carr, that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. It was objected, that the accounts consisted of gross sums, and the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account. By the court: "A *mandamus* is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the *mandamus*. And if any person think himself aggrieved by the account, he may have his remedy by appeal."

Rex v. Peake, 1 Keb. 574; 1 Bott, 308. The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concerned his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden.

By the stat. 23 Geo. III. for regulating the affairs of the poor of Birmingham, the guardians and overseers thereby appointed are directed to adjust their accounts at quarterly meetings of their own body; and an appeal is given to the sessions in respect of all matters done by virtue thereof: but the statute is silent as to any submission of the overseers' and guardians' accounts to magistrates, as required by the statute 50 Geo. III. c. 49; held, however, that a *mandamus* would lie from the court of K. B. to the guardians and over-

1. Overseers' Accounts, delivering and passing same.

It is not necessary, in order to give the sessions jurisdiction to hear an appeal against overseers' accounts, that they should have been previously allowed at a *special sessions*, pursuant to 50 Geo. III. c. 49.

Commitment of a parish collector of the rates to gaol, there to remain until he should have made a true account, and until such money as should appear to be in his hands should be paid by him or his sureties, was held well, although it concluded by directing the gaoler to keep him until he should be discharged by due course of law.

Justice refusing to swear an overseer to his account may be compelled by *mandamus*.

Churchwarden may be punished as an overseer: but in the commitment he must be called overseer.

Accounts under the Birmingham Act.

1. Overseers' Accounts, delivering and passing same.

Overseer dying or removing, his accounts to be delivered to churchwarden, &c.

seers to pass their accounts in the manner required by that statute. (*Rex v. Warwickshire (Justices)*, 2 D. & R. 299, S. C. *infra*.)

17 Geo. II. c. 38, s. 3. "If any overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another in his stead, who shall continue in office until new overseers are appointed; and if any overseer shall remove as aforesaid, he shall, before such removal, deliver over to such churchwarden, or other overseer of the same place, his accounts, verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some churchwarden or other overseer of the same place, and shall pay out of the assets left by such overseer all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied."

When a parish extends into more counties than one, or lies partly within and partly without the liberties of any corporate place, the officers of such a parish shall make one account before the head officers of the place corporate, and one other before the justices of the county. 43 Eliz. c. 2, s. 9.

Before the 17 Geo. II. c. 38, the first section of which prescribes the manner of preparing the accounts, a very general and unsatisfactory statement of them seems to have been tolerated. Thus where two justices committed an overseer till he should make a true account, he having produced an account *in gross* of his receipts and payments, and refused to produce his books or a particular account of the monies received on rates assessed, or of the particular payments making up the sum charged in gross; the court of King's Bench discharged him from custody, saying that the justices had no authority to commit in this manner by the 43 Eliz. c. 2, for that an account was confessed to have been tendered. (*Rex v. Corrocke*, 1 Show. 395; 1 Bott, 310; *Walrond's case*, *ib.* 300.)

Delivering a summary or balance sheet insufficient.

Delivering in a summary or balance sheet of the monies received and expended, is not such an account as the statute (17 Geo. II. c. 38, s. 1,) requires. The overseers must do a great deal more. They are to give to the succeeding overseers a just, true, and perfect account in writing, fairly entered in a book or books, to be kept for that purpose, of all sums of money by them received, or rated and assessed and not received. Now a mere balance sheet will not show what sums have been rated and assessed and not received. The overseers clearly ought to verify and deliver over the sort of account required by the very terms of the statute. Any usage to the contrary cannot dispense with the provisions of the act of parliament. Per Abbot, C. J. *Rex v. Justices of Worcestershire*, 3 D. & R. 299. And a writ of *mandamus* was issued to the justices to hear and determine a complaint against the ex-overseers for not properly accounting pursuant to the statute. *Id.*

Mandamus will lie to compel guardians to make a fresh account, the former account having passed without calling the attention of the justices to a large objectionable item.

Rex v. Justices of Warwickshire, 2 D. & R. 299. Abbott, C. J. "One question is, whether these accounts have been *passed*: I mean passed so as to direct the attention of those who are to pass them to a particular item which is the subject of objection. I do not say that in the investigation of voluminous accounts, such as these, the attention of the parties is to be directed to the expenditure of every shilling which may have been paid by the guardians in the ordinary discharge of the duties of their office, such as trifling sums paid to paupers or minute expenses of that description. The strong fact here alleged is, that a very large sum of money (a) had been paid for a particular purpose, the legality of which payment might be doubted. It is now supposed to have been paid under the sanction of the authority of the magistrates, before whom it was the duty of the guardians and overseers to pass their accounts, but against the opinion of many persons, who thought that such

(a) The sum allowed was nearly 400*l.* for prosecuting a man for a libel on two justices, relating to their conduct in committing a pauper for returning to a parish from which he had been removed.

a disbursement ought not to have been made. It is alleged that the overseers and guardians were apprised of such objections, before they proceeded to pass these accounts. Under such circumstances, it was their duty, in seeking to have the allowance of such an item, to have directed the attention of the magistrates to that item, so that they might exercise their judgment upon the subject, and allow or disallow it, according as they were satisfied or dissatisfied with it. What is the allegation in this case? The party who makes the affidavit states that he was present when the accounts were submitted to the justices, but that the attention of the justices was not called to nor did they proceed to examine the whole of the items, but merely looked at the summary, in which was a lumping sum of 2000*l.* paid to the constables. There is no affidavit, on the other hand, to show that the parties inquired into or had their attention directed to the component parts of that sum. I am therefore clearly of opinion that we ought to make that part of the rule absolute which prays for a mandamus to the overseers and guardians to pass their accounts, and it will be competent for them to make a return thereto."

By 17 Geo. II. c. 38, poor rates in hands of overseers are to be paid by his executors in preference to all other debts. (2 *Bla. Com.* 511.) As to the proof in bankruptcy against an overseer, see *Ex parte Exleigh*, 6 *Ves. Jun.* 811; *Chitty's Eq. Dig.* 725.

1. *Overseers' Accounts, delivering and passing same.*

2. *What may be charged in Accounts.*

The overseers are entitled to take credit for all sums properly expended in the discharge of their duty, but not for disbursements to which the poor rates and other monies which come into their hands are by law inapplicable. See "*Purposes of the Poor Rate*," *ante*, 104 to 107. And see *several points*, *Barrons v. Luscombe and others*, 5 *Nev. & Man.* 330. See also instructions to overseers, *post*, Appendix.

By 9 Geo. I. c. 7, s. 2, no parish officer shall (except upon *sudden and emergent* occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in the parish books as a person entitled to receive collection, upon pain of forfeiting 5*l.* And although the act does not go on to say that such items of expenditure shall be disallowed, the justices may very properly strike them out of the accounts."

By 4 & 5 Will. IV. c. 76, s. 89, "all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates, contrary to that act, or at variance with any rule of the commissioners, are illegal; and every justice is hereby required to disallow such payments, &c.: provided always, that no allowance by any justice shall exonerate such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules of the commissioners, or to the provisions of that act."

Overseers may justly charge to the parish whatever they have *bonâ fide* expended in providing work for the children of indigent parents, and for persons having no means of livelihood, in relieving those paupers who have claims upon the parish, and in the disposal of the stock raised for these purposes: indeed, it has been said that they may credit themselves *with any money expended for the good and on the business of the parish*. (*Per Ashhurst, J., Rex v. Micklefield, Cald.* 509. (b)) But it appears by the same case, that an overseer proceeding through all the stages of an expensive law-suit, without the concurrence of a vestry, is personally liable. Of course they are entitled to charge whatever they have paid under the direction of a statute, or under any order upon them, or other legal process, as under 51 Geo. III. c. 79, and 52 Geo. III. c. 160, &c., or for costs of maintenance, removal, or appeal. (*Vide Rex v. Inhabitants of Essex, ante.*) But it is not decided that the expenses of a law-suit, incurred by the officers without consulting the vestry, are chargeable in the account, unless, perhaps,

2. *What may be charged in accounts.*

Payments contrary to this act to be disallowed.

What expenses overseer may charge. (a)

(a) See in general for what purposes a rate may be made, *ante*, 105.

(b) 1 *Bott, P. L.* 113; and see 3 *W. & M. c.* 11, s. 11.

2. *What may be charged in Accounts.*

where the emergency of the occasion allows no time for that precaution. In order to obtain the allowance of law expenses, the overseers must not have misconducted themselves in contracting them. In some instances the statutes which direct the expenditure of money authorize the overseers in express terms to charge it in their accounts: such are the enactments of 2 & 3 Anne, c. 6, s. 2; 17 Geo. II. c. 5, s. 1; 18 Geo. III. c. 19, s. 4; and 22 Geo. III. c. 83, s. 8.

It is presumed to be undeniable that the money advanced as an inducement to paupers, between whom an illicit intercourse has taken place, to marry, is a misapplication of the parish funds; and that if objected to on passing the overseers' accounts, such items must be disallowed. The question has never yet, it is believed, been before the superior courts; but it can hardly be said that expenses so incurred are for the relief of the poor, or can be classed among any of the objects to which those funds are by law applicable.

The expenses of a constable, in prosecuting an assault committed on him in the execution of his duty, cannot be paid by the overseer out of the poor-rate, and are not within the 18 Geo. III. c. 19, s. 4. (*Rex v. Bird*, 2 B. & A. 522. See also *Rex v. Seville*, 5 B. & A. 180.)

Overseers cannot charge in their accounts for money paid as a salary to one of the overseers.

Rex v. Glyde, 2 M. & Sel. 323, n.; *Bott*, 332. In the accounts of the overseers, 12l. 10s. paid to W. as a salary was allowed. Lord *Ellenborough*, "This rule may be enlarged, subject to a case to be stated as to what the grounds for the allowance were, that we may ascertain that the salary was not meant as a pension to the overseer, which the law will not allow. We have no doubt on the face of the order that he has no title to a salary for any meritorious services, or for any services at all; but we would wish to relieve the parties if it has been paid in reality for the maintenance and keeping of the poor. Perhaps the best way will be to quash the order, and remit the case to the sessions to rehear the appeal."

The overseers are to be allowed only for their bare expenses. *Per Aston, J.*, in *Rex v. Lord Ashburnham*, 2 Nol. P. L. 443, 462, n.

Salary of assistant overseer.

By 59 Geo. III. c. 12, s. 7, the overseers may be allowed the charge of a salary for an assistant. But such a charge was not allowed before the passing of that act, and this although under the sanction of a vestry. *Rex v. Welch*, 1 Bott, 341; 4 Doug. 236.

Overseers cannot charge for making or collecting poor rate, or making out list of defaulters, although authorized by a vestry.

Rex v. Gwyer, 2 Adol. & Ell. 216; 4 Nev. & Man. 158, S. C. The overseers are not entitled to charge in their accounts for making poor rates, for making divisions of the same, for making copy of the same for the collectors, for payments to an accountant for examining, making up, and entering the accounts of the year, and list of defaulters on the rates, nor poundage for collecting the rates, although such charges had been authorized by the resolution of the vestry. This was an appeal against the accounts of a parish of great extent, with a population of 13,000 persons and an annual expenditure for the poor of 8000l. For some years there had been an assistant overseer, but in the year in question the vestry resolved that none should be elected, but that the overseers should have power to call in what assistance they required; and the sessions found that the sums objected to were fair and reasonable. But it was held, that although these circumstances made it extremely reasonable that the sum should be allowed, that the sessions had no power to do so; and that the situation of overseers is like that of other persons upon whom the law casts burdensome duties without remuneration.

3. *Reimbursing overseers.*

What disbursements they may reimburse. (a)

3. *Reimbursing Overseers.*

It frequently happens that the overseers advance money for the benefit and on account of the parish, and in such cases they may now reimburse themselves out of any subsequent rate made by them during their year. If there be a balance due to the overseers, the successors cannot pay them, except in cases provided for by statute. (*Rex v. Tawney*, 2 Salk. 531; 2 Ld. Raym. 1011. *Rex v. Overseers of St. Peter's, Chichester*, Fol. 33; 1 Bott, 81.)

(a) See as to waywardens what expenses they may charge in their accounts. *Rex v. Fowler and others*, 3 Nev. & Man. 606.

By 17 Geo. II. c. 38, s. 11, the succeeding overseers, by levying and getting in the arrears of any rate which their predecessors made, but from refusal or neglect of the party rated were unable to get in, might, and still may, reimburse the advances of those predecessors to the extent of the arrears so got in. And by 41 Geo. III. (G. B.) c. 23, s. 9, it is made lawful to reimburse all sums which the preceding officers may have advanced during a time when no rate has been made, or where an appeal has been depending by which the whole rate might be affected.

3. *Reimbursing Overseers.*

How far may reimburse predecessors.

So that, unless the non-payment of the rate have arisen from the remissness of the officers themselves, (which being no neglect or refusal of the party rated, comes not within statute 17 Geo. II. c. 38, s. 11,) or unless the officers having made and collected the rate have been imprudent enough to assess it too low, in which event the relief given by stat. 41 Geo. III. (G. B.) c. 23, s. 9, would not be applicable, the advances *bonâ fide* made by parish officers seem now to be secured to them, notwithstanding any accident by which they may have been unable to repay themselves during their year of office.

Before the passing of these statutes, where it appeared that an overseer had omitted to take credit in his account for a sum of money justly expended by him, it was held that the sessions had no authority, upon appeal, to order, his successors to pay the money to his executor, although the vestry consented (*Rex v. Ware, 1 Bott, 314, pl. 328; Fol. 10; 10 Mod. 104*), for otherwise a man who came into the parish after the overseers' year, would be charged to the expense of that preceding year, while he had been contributing to the maintenance of other poor in another parish. (*Id.; Rex v. Goodcheap, 6 T. R. 159.*)

But where one overseer is money out of pocket, and one of his co-officers has received a sufficiency to reimburse him, an order may be made on such officer. (*Semble, Rex v. Limehouse, Fol. 22, 1 Geo. I., and see 2 Nol. 457.*)

4. *Delivering over Balance, Books, Chattels, &c.*

4. *Delivering over balance, books, chattels, &c.*

By the 43 Eliz. c. 2, s. 2, the two or more justices who took the account of the overseers, upon a balance found against them, might order all or any of them to pay such balance, and might issue warrants of distress to enforce the payment (see *Rex v. Topsham, 2 Salk. 484; Rex v. Bartlett, 1 Bott, 506; 2 Nol. 451; Rex v. Whitecar, 1 Bott, 326*); *Rex v. Bill*, cited by Lord Mansfield, in 2 Burr. 805, the overseers were indicted for not obeying the order of sessions in paying over the balance.

The 17 Geo. II. c. 38, s. 2, empowered any two or more justices to commit the overseers to gaol until they had given an account and yielded up the monies, goods, or other things in their hands.

And now by the 50 Geo. III. c. 49, s. 1, it is enacted "that if the churchwardens and overseers, or any of them, refuse or neglect to deliver over to their successors, within ten days from the signing or attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such accounts shall be remaining in the hands of such churchwardens and overseers, the subsequent officers may, by warrant from any two or more justices, levy the same by distress and sale of the offender's goods, returning the overplus; and in default of such distress, the justices may commit the offender or offenders to the county gaol, to remain without bail or mainprize until payment." See construction, *Lester's case, ante, 242.*

By 17 Geo. II. c. 38, s. 6, the new officers having received the book or books containing the account, they or one of them must keep such book or books in some public place; and shall permit any person there assessed or liable to be assessed, to inspect the same at all reasonable times for the fee of 6d.; and on demand shall give copies thereof, or of any part thereof, to such person, at the rate of 6d. for every 300 words, and in proportion for any greater or less number. Where there is a vestry within a parish or in a township, that assembly may direct in what custody the account shall be kept.

Inspection of the books by rated inhabitants, and taking copies thereof.

4. Delivering
over Balance,
Books, Chat-
tels, &c.

Balance must be
paid over to suc-
cessors.

Rex v. The Justices of Somersetshire, 2 Stra. 992. *Mandamus* to the justices to grant a warrant for levying the balance of the last overseers' account. They return, that there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity-money, and get it laid out for the benefit of the poor; that one Young was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay Young: and for that cause they had refused to grant the warrant. But by the court: "There must go a peremptory *mandamus*; for the 43 Eliz. c. 2, s. 2, says, the balance shall be paid over to the new overseers, under a penalty: and it is not in the power of the vestry to dispense with the statute."

Malkin v. Vickerstaff, 3 B. & Ald. 89. A parish contained two divisions, each of which had separate overseers and separate rates, and their poor were also paid separately; the overseers of both divisions met at the end of every year, and, in making up their accounts, if the overseers of the one had money in hand, they paid over the balance to the overseers of the other: held, that this was in effect one joint and entire parochial account, and that all the overseers were to be considered as joint overseers of the parish at large.

Rex v. Tucker, 5 M. & Sel. 508. *Tucker* and another were appointed overseers from Lady-day, 1815, to Lady-day, 1816, and *Tucker* received between Lady-day, 1815, and the end of January, 1816, 952*l.* 4*s.* 6*d.*, out of which he disbursed 770*l.* 15*s.* 3*d.*, leaving a balance in his hands of 181*l.* 8*s.* 10*d.* On the 6th of February, 1816, a commission of bankruptcy issued against him, and he was declared bankrupt, and accounted under the commission for the balance; but having before the commission absconded from his house, the account books in his hands, as overseer, were taken away from his house by the churchwardens and overseer. At Lady-day, 1816, new overseers having been appointed, *Tucker* attended a vestry meeting, and made up his accounts by checking them with the account books in the hands of the overseers; from which it appeared that the above balance was due from him to the parish before he became bankrupt, and he offered to verify the account on oath. Afterwards he obtained his certificate; notwithstanding which, the justices issued their warrant upon the complaint of one of the overseers that *Tucker* had not made and given in his account, and yielded up the monies and things claimed by the parish to them, the succeeding overseers; under which warrant he was carried before the justices and committed. And upon a rule *nisi* for a *habeas corpus*, the doubt was, if his bankruptcy and certificate discharged the debt; and *Rex v. Eggington*, (1 T. R. 369,) was cited, which, however, had not been approved of in *Ex parte Exleigh*, (6 Ves. 811). It was also argued that an overseer is not like a mere trustee; he is indictable if he does not account and pay over the balance (*Rex v. King*, 2 Str. 1268; *Rex v. Commins*, 5 Mod. 179); though he cannot be called on to bring in his account until the year expires. (*Rex v. Gibson*, Fol. 20.) Now, at the time of the defendant's bankruptcy, there was not any debt due from him as overseer for which he could be sued, nor any one to whom he could pay it until his successors were appointed; consequently, this is not a debt proveable under the commission within the statutes of bankrupt. But *per Curiam*, "The money in his hands at the time of the bankruptcy was *debitum in presenti*, although he might only be accountable for it *in futuro*." It had been held, with respect to the land tax collectors, that any of the parishioners might prove.

Rex v. Sir J. Carter and others, 4 T. R. 246. On an appeal against the allowance of the accounts of Mr. *Read*, an overseer of Fareham, the sessions disallowed several items, amounting to 42*l.* 7*s.* 1*d.*; but the order of sessions did not direct *Read* to pay that sum over to the succeeding overseers. On *Read's* subsequent refusal to pay over this sum, an application was made to the defendants, as magistrates, to enforce payment under 43 Eliz. c. 2, s. 2, 4, and 17 Geo. II. c. 38, s. 3; but they conceiving they had no authority, declined to interfere. Lord *Kenyon*, C. J. "It seems to me that these justices have jurisdiction in this case. The effect of the appeal

An overseer is discharged by his bankruptcy and certificate from a debt due in respect of a sum of money in his hands as overseer at the time of his bankruptcy, although this happen before the expiration of his year of office, before which time he cannot be compelled to account.

Two justices out of sessions may enforce payment of the balance of overseers' account after appeal, though the sessions do not make any order for payment.

was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance." *Grose, J. (Ashurst and Buller, Js. absent,)* "These are as much arrears now as they were before the appeal; only the *quantum* is ascertained." Rule absolute.

Rex v. Hedges, 3 Salk. 533. On appeal against the allowance of the account, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the Court: "They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment in the same manner as the two justices must do."

Reg. v. Turner, 1 Bott, 341; Vin. Ab. Poor. If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them, and upon the return thereof there may be a commitment.

Rex v. Pascoe, 2 M. & Sel. 343. On an application for a *mandamus* to two justices to grant a warrant of distress for levying 39*l.* 13*s.* 11½*d.* upon the late overseers of Ludyan, it appeared that their accounts for the year ending Easter, 1813, were submitted to the defendants for allowance, when the defendants disallowed several items, amounting to 43*l.* 1*s.* 11½*d.* and made an order for the said overseers to pay over the same to the present overseers. The late overseers appealed against the order, which appeal was dismissed for want of sufficient recognizance: but, notwithstanding such dismissal, they refused to pay over the balance; whereupon application was made to the defendants for a warrant of distress, to levy the same on their goods. A summons issued, and the late overseers attended the defendants, when it appeared that they had paid over 3*l.* 8*s.*, but refused to pay the remainder; whereupon the defendants were required by one of the present overseers to issue their warrant of distress; but as the other two parish officers refused to concur with him in such application, the defendants thought they had no jurisdiction, for the want of the concurrence of the major part of the present churchwardens and overseers, and thereupon refused to issue their warrant. It was stated, that the overseer who made the request was not able to procure any other of his colleagues to concur with him. The court said, that without imputing fraud in this case, they should be restraining the meaning of the statute too much, if they did not put it into motion upon the application of any one of the overseers; that the mischief of a more strict construction would be great, for then the dissent of any one of the churchwardens and overseers would have the effect of suspending the statute. *Per Curiam.* Rule absolute.

Case of the Borough of Banbury, 1 Bott, 339. Where four towns lie in one parish, having each an overseer, and there is one rate for the whole, and one account, although each overseer collected and paid that of his respective town, and the inhabitants of each were respectively assessed by their respective overseers, the justices may order a *distribution*, where there is a want of money in some, and a surplusage in others.

So in *Rex v. Churchwardens of Topsham, 1 Bott, 340*, it was held the justices might order payment of the balance to the succeeding overseers.

And in *Rex v. Limehouse, 1 Bott, 342*, that one overseer should reimburse another where the one had a surplus, and the other was money out of pocket. See also *Malkin v. Vickerstaff, 3 B. & Ald. ante, 248.*

Rex v. The Justices of Essex, 3 B. & Adol. 941. The overseers of Woodford were accustomed to divide the duty of collecting the rates, each performing it for half a year. *Peppercorn* and *Wood* were appointed overseers, and *Wood* having discharged his own half-year's duty, offered his colleague to do and did the other likewise. He afterwards delivered in the annual overseers' account to the vestry, making no distinction between the half years. It being urged that both overseers should sign the account,

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Balance to be levied by distress, payment having been ordered by sessions on appeal.

For non-payment of balance there must be distress before commitment. (a)

If the overseers, after an order to pay over the balance to their successors, which is confirmed on appeal, refuse to pay such balance, the two justices may issue their warrant to levy the same under 50 G. 3, c. 49, upon the application of one of the succeeding overseers, although the rest refuse to concur in such application: therefore, where the justices refused to issue such warrant upon such application, the court granted a *mandamus*.

Where a balance may be ordered to be distributed.

Repayment of balance.

One overseer reimbursing another.

Warrant of distress cannot be issued against a co-overseer on the ground that he signed the accounts.

(a) *Semble*, no action will lie against an overseer to recover a balance in hand, 1 *McClelland & Young*, 450; 2 *Burr.* 1157.

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Commitment should be until they account.

Books to be delivered to the new overseers.

A conviction by two justices under stat. 17 G. 2, c. 38, upon complaint of the overseers of a parish against the late overseer, for refusing and neglecting to deliver over to them a certain book belonging to the parish, called *The Bastardy Ledger*, convicting him of the said offence, and adjudging that he should be committed to the common gaol, to be safely kept until he should have yielded up all and every the books concerning his said office of overseer belonging to the parish, was held void as to the adjudication respecting the imprisonment, for excess, the same extending beyond what was previously required of the person convicted; and a warrant of commitment founded on this conviction, and directing the gaoler to keep him in the terms

Peppercorn, after some objection, subscribed with *Wood* a declaration that they believed it to be correct; but on passing the account at special sessions, *Peppercorn* refused to swear to its accuracy, saying that he knew nothing of it except having examined the vouchers; and it was passed on the oath of *Wood* only. A balance remained unpaid to the parish. Held, that the signature of *Peppercorn* was not an adoption of his colleague's acts during the latter half-year; and therefore (*Parke, J. dubitante*,) that *Wood* could not be considered as *Peppercorn*'s agent during that half-year; but that at all events a distress could not issue against *Peppercorn*, the precise arrear during that period not being ascertained.

The Mayor v. Churchwardens of Northampton, Carth. 152; 1 Bott, 309. The mayor of Northampton committed the churchwardens, as overseers of the poor, for refusing to account: and the warrant of commitment concluded, *until they be duly discharged according to law*. The court held the commitment void; because the warrant ought to conclude, *there to remain until they should account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy: for in the first case, the commitment must be until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case he shall not lie till a sessions, but shall be discharged upon performance of his duty. (See *Goff's case*, 3 M. & Sel. 203, ante, 243.)

Rex v. Clapham, 1 Wils. 305; 1 Bott, 301. A mandamus was granted to oblige the old overseer of the poor to deliver over the books of the poor rates to the new overseer; for, by the court, they are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer and churchwarden for the time being ought to have the custody thereof.

Groome v. Forrester, 5 M. & Sel. 314. And see *Ex parte Leake*, 9 Bar. & Cres. 234; and ante. Lord Ellenborough, C. J. "This was a motion to set aside a verdict against the defendants, justices of the peace for the town and liberties of Wenlock, in the county of Salop, in an action for false imprisonment. The imprisonment complained of was the commitment of the plaintiff to the common gaol at Shrewsbury, under the warrant of the defendants as magistrates, founded upon a conviction of the plaintiff as late overseer of the parish of Brosely, in that county; which conviction was had before the defendants, under the 17 Geo. II. c. 38, against the plaintiff, for not delivering over to the succeeding overseers of the parish a certain book belonging to the parish, called the *Bastardy Ledger*, in breach of his duty under that statute, which required him to deliver over all such sums of money, goods, chattels, and other things, as should be in his hands, to such succeeding overseers. In case of his refusal or neglect so to do, the statute (s. 2,) authorizes two or more justices of the peace to commit him to the common gaol, until he shall have paid and yielded up such monies, goods, chattels, and other things in his hands. The conviction, as far as relates to the withholding of the particular book in question, the offence charged in the information, is correct. After finding him guilty thereof, it proceeds to adjudge that *Thomas Groome* (the plaintiff and late overseer) for his offence aforesaid, (that is, in not delivering over the particular book, *The Bastardy Ledger*,) be forthwith committed to the common gaol at *Shrewsbury*, to be safely kept 'until he shall have yielded up all and every the books concerning his said office of overseer, belonging to the said parish.' This is the adjudication; and the warrant of commitment follows the adjudication, and of course directed the gaoler to keep *Groome* until he should have yielded up all and every the books concerning his office of overseer; thereby, in effect, casting upon the gaoler the function of inquiring and determining what were 'all and every the books concerning the office of overseer,' upon the yielding up of which the gaoler was to discharge his prisoner, instead of requiring the gaoler to detain his prisoner (as it should have done) until he should have yielded up the particular book specified and described in the information, and for the non-delivery of which he was convicted. Such a commitment was certainly not authorized either by the letter or the spirit of the act of parlia-

ment, and subjected the prisoner to the risk of an imprisonment for an indefinite period, viz. until he had complied with a condition of greater extent than was imposed by the act of parliament; and where the gaoler who should have to detain him under the warrant had no adequate means of judging whether his prisoner should have, in fact, complied with the terms of such condition, and, of course, whether he was entitled to his discharge or not. This, it will be observed, is a conviction and commitment on the ground of a supposed contumacy; but the defendant could have been guilty of no contumacy in respect of the non-delivery of any other book or thing than that book which alone he had been required to deliver, viz. *The Bastardy Ledger*. The conviction and commitment, therefore, in respect of a supposed contumacy to any greater extent than that in which obedience had been previously required from him, must of course be unfounded. Previously to commitment for refusing to do a thing, there must have been a charge and proof, and the party cannot be committed 'until he does something,' which is not charged and proved upon him that he has previously refused to do. Assuming that the warrant is in this respect illegal and void, the question is, whether it be therefore void *in toto*; and if it be, whether the defendants, as committing magistrates, are liable to an action of trespass and false imprisonment for having committed the plaintiff thereupon. And that it is void *in toto*, the case of *Milward v. Coffin*, 2 Bl. R. 1331, is an authority; there *Gould, J.*, in the absence of *De Grey, C. J.*, said, 'It is fairly and candidly conceded, that if one of the rates be illegal, the whole warrant is bad; and I take the first to be illegal, for assessing the plaintiff beyond the extent of his occupation. All that related to the assessment of lands, not in the occupation of the plaintiff, was *coram non judice*; the justices therein exceeded their jurisdiction, and their determination is a nullity.' In 2 *Inst.* 52, there are to be found several good rules in respect to commitments: the fifth of which is, 'The warrant or *mittimus*, containing a lawful cause, ought to have a lawful conclusion, viz. and him safely to keep until he be delivered by law, &c. and not until the party committing doth further order.' Likewise, in 2 *Inst.* 591, there is a further rule: 'Now as the *mittimus* must contain the cause, so the conclusion must be according to law, viz. the prisoner safely to keep, until he be delivered by due order of law, and not until he that made it shall give other order, or the like.' The case of *The Mayor and Churchwardens of Northampton*, (*ante*, 250,) is a leading case upon the proper form of conclusion of a commitment until a particular act should be done by the party committed. *Bracy's* case is an authority to the same effect; it is reported in 5 *Mod.* 308; 1 *Salk.* 348; 1 *Lord Raym.* 99; also in the margin of *Carthew*, 153, from which I cite it. One *Bracy* was committed by commissioners of the statute of bankrupts for refusing to answer; and they concluded their warrant, that he be committed to prison, there to remain 'until he conform himself to our authority, and be thence delivered by due course of law;' and upon the return of a *habeas corpus* he was discharged, because this conclusion was not pursuant to the statute of bankrupts; and the *Mayor of Northampton's* case was cited for an authority. In *Lord Raymond's* report it is laid down, that if he had been committed 'until he should conform to their authority,' in the special matter, it had been good. And of that opinion was *Lord Holt*; and he said, that the word 'submit,' (which is the word in the statute, and not 'conform') does not mean an act of humble submission, but only to make answer to the question proposed." In *Salkeld's* report, the court held the word 'conform,' instead of the word 'submit,' to be well enough, because it was of the same sense; but because the commissioners had other authorities besides that of examining, and it did not appear but that it might require a submission to them in other respects, and for that all powers given in restraint of liberty must be strictly pursued, and in this case they had but a special authority, and must not exceed it, they held the return naught. *Yaxley's* case, *Carth.* 291, was 'a commitment by the secretary of state, under the stat. 35 Eliz. for refusing to answer whether he was a Jesuit, &c. and on a *habeas corpus* he prayed to be bailed. The exception to the commitment was, that the conclusion thereof was

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of the adjudication, was also holden void *in toto*, for which trespass and false imprisonment would lie against the justices, although the conviction had not been quashed.

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'there to remain until he shall be from thence discharged by due course of law,' when the words of the statute are 'until he shall answer unto the questions;' and therefore the commitment ought to be special, according to the statute; and the *Churchwardens of Northampton's* case was cited and relied on; and for that objection the court held the commitment ill.' Other cases might be cited to the same effect, such as *Rex v. Hall, Cowp.* 60. The foregoing cases are cases of discharge from commitment, on the ground of an illegality apparent on the face of the warrant. The two following cases, *Baldwin and Wife v. Blackmore*, 1 Burr. 595, and *Crepps v. Durden, Cowp.* 640, establish that in such case, that is, of warrants illegal upon the face of them, for an excess of jurisdiction in the magistrate, trespass is maintainable against the committing magistrate; and this was held in the latter case, although the conviction had not been quashed. In *Baldwin and Wife v. Blackmore* a warrant to commit the wife, as an idle and disorderly person, for returning with her husband to the parish from whence removed, without a certificate, was holden to be void, and that trespass lay for the imprisonment under it. So, where the warrant ought to be to imprison for a month, and it is until discharged by due course of law. *Crepps v. Durden, Cowp.* 640, was a conviction in four penalties, for exercising his ordinary calling of a baker on a Sunday. As there can be but one offence on the same day, it was held an excess of jurisdiction, for which an action would lie before the convictions were quashed. There the question immediately before the court was, whether an objection could be made to the legality of a conviction before it was quashed, and it was held that it might. Upon these authorities, and the reason of the thing, we are obliged to pronounce that the commitment made in pursuance of the said adjudication in this case, as well as the adjudication itself, in respect to the imprisonment, being, in this particular, a clear excess of jurisdiction, was not warranted by law, and that the imprisonment thereunder was a trespass in the committing magistrates, for which this action is maintainable: which we cannot but regret, as the facts of the case would have authorized a commitment if the warrant had been framed in a manner conformable to the powers of the magistrates under the statute. The consequence is, that the rule *nisi* for setting aside the verdict must be discharged."

The court of K. B. will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those accounts upon affidavit.

Rex v. James, 2 M. & Sel. 321. A rule was obtained for quashing an order of sessions, allowing the accounts of the overseers of Croydon. The order of sessions was upon the face of it generally, allowing the said accounts and dismissing the appeal, and further ordering that the appellants should pay to the overseers 40s. costs. The defendants, in their affidavit, stated that these accounts contained charges of sums in gross as monthly payments, without stating the items, some of which items were stated to be for charges illegal or excessive; that they contained a charge for a salary to one of the overseers, &c. And now the rule coming on, Lord *Ellenborough*, C. J. interposed by enquiring if there was any objection to the order upon the face of it, for otherwise the court would not go into the overseer's accounts upon affidavit. The sessions was the proper forum for deciding such matters: the time of the court would otherwise be absorbed in taking parish accounts. But it was urged that great injustice might be done if there was no relief against accounts so made up as the present, without specifying any particulars; and *Rex v. Battel*, a recent case, was cited, where the court had granted relief against the overseers' accounts, upon a rule obtained upon affidavit that they contained a charge for an allowance paid to the overseer. Lord *Ellenborough*, C. J. said, "If there is likely to be a defect of justice, the remedy must be by application to the legislature; for the court cannot enlarge the limits of its jurisdiction in order to supply a remedy; the sessions have jurisdiction over these matters; if, on the removal of the record by *certiorari*, it had appeared to be erroneous, this court would then have acted upon it." Rule discharged.

The reporters presume the case of *Rex v. Glyde* (*ante*, 246), to be that alluded to in argument in the above case under the title of *Rex v. Battel*,

which is printed by them in a note to the above case, and is stated to have been decided in Hilary term, 1813. The rule for the *certiorari* was obtained upon an affidavit as above stated, but the case, as it appears, was decided upon objections apparent on the face of the order.

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The grounds of appeal must be stated in the notice, as in the case of an appeal against a poor rate. See 41 Geo. 3, c. 23, *ante*, 229.

The 43 Eliz. c. 2, s. 6, enacts, "that if any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general or quarter sessions, whose order therein shall bind all parties.

And by 17 Geo. II. c. 38, s. 4, "if any person shall have any material objection to such account, or any part thereof, he may, giving reasonable notice to the churchwardens and overseers, appeal to the next sessions; but if reasonable notice was not given, then they shall adjourn the appeal to the next sessions; and the court may order and award to the party for whom the appeal shall be determined, reasonable costs, as in cases of settlement by 8 and 9 Will. III. c. 30." See the other part of this section, *ante*, 218.

And by s. 5, in all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. See 1 Geo. IV. c. 36; *ante*, 216.

The decisions respecting appeals against *poor rates* will be found applicable in most cases when questions as to *notice*, the *time* of appealing, &c. arise upon appeals against overseers' accounts. See *ante*, 214 to 228.

It may be expedient to repeat, that if the management of the parish poor be vested in the churchwardens, overseers, governors, and directors by a local act, which also gives an appeal to the body so constituted to any person aggrieved by any thing done under the act, and a subsequent appeal to the quarter sessions against their *determination*, if he is dissatisfied with it, this course of proceeding must be strictly pursued. See *Rex v. Justices of Kent*, 9 B. & C. 283, *ante*.

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Appeal against the account, must be to the next sessions.

Corporations, &c.

Where it is provided that appeals shall be first made to and determined by the governing body named in a local act, that course must be followed.

Upon an appeal against an overseer's accounts, it appeared that *the appellant was a co-overseer*, appointed with respondent contemporaneously, and it was objected that the appellant being a joint overseer with the respondent, he was, in effect, appealing against *his own* accounts. The sessions yielded to this objection and dismissed the appeal. Upon a rule for a *mandamus*, it was contended that the sessions had heard and determined the case, as they had examined a witness, quashed the appeal, and given costs to the respondent; and, although they might have come to a wrong conclusion, yet, as they had decided the question, the *mandamus* ought not to be granted. But the court said, "that it was clear the justices had dismissed the appeal, not upon the merits, but because they thought they had no jurisdiction, which was a question of law; and if they were mistaken in that the *mandamus* ought to go." It was then contended that one overseer could not appeal against the accounts of the other; that, although there were several individuals, their duties were not several, both having the same authority, and the same liabilities in the management of the poor. The court, however, were of opinion that the rule ought to be made absolute, and observed, that in this case it appeared each overseer kept a separate account; and it was clear each overseer may act by himself, and make separate disbursements, against which the other would have a right to appeal. It might happen, that one overseer might have grounds for appealing against the accounts of his colleague, which would be unknown to other persons. Besides, his being an overseer does not take away his right, as a parishioner, to appeal against the accounts of the other. The words of the act fully bear out this interpretation; and it is obviously for the benefit and protection of parishes that it should be so acted upon whenever a proper occasion presents itself. *Rex v. The Justices of Gloucestershire*, 1 B. & Adol. 1.

An overseer may appeal against his co-overseer's accounts.

Rex v. The Justices of Worcestershire, 5 M. & S. 457. The overseers' accounts of the parish of Elmley Lovett, for the years 1814 and 1815, were

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counts must be to the next general quarter sessions after the allowance of the accounts. The 17 Geo. II. c. 38, s. 4, in this respect limits the right of appeal given generally by 43 Eliz. c. 2, s. 6.

Accounts must appear to have been allowed by the justices before the appeal.

Where overseers' accounts were not allowed till the last day that an effectual notice of appeal to the next sessions could have been given, and it did not appear when the party objecting had notice of such allowance: Held, that a notice of appeal to the next subsequent sessions for which an effectual notice of appeal could be given was good.

allowed by two justices on the 31st March, 1815. Notice of appeal against the same was given for the sessions to be holden on the 23d of April, 1816, at which sessions an appeal was entered; but the court refused to enter upon the merits, or to hear the appeal, on the ground that it came too late. And the question was, whether the appeal ought to have been to the general quarter sessions next after the allowance of the accounts? Lord *Ellenborough*, C. J. "In *Rex v. Coode*, *Cald.* 464, the case of *Rex v. Lord Ashburnham* was brought under the consideration of the court, and yet they came to a decision directly contrary to it; and where good sense and convenience are all on one side, one is almost led to regret that Serjt. Kerby's note of that case ever got into print. The plain meaning of the 17 Geo. II. in enacting 'that it shall be lawful to appeal to the next sessions,' where by a pre-existing act the appeal was without limitation of time, is to negative the power of appealing to any but the next. In *Rex v. Coode*, Lord *Mansfield* was of opinion that the 17 Geo. II. did confine the appeal, and the court agreed that they must decide that the statute had repealed the 43 Eliz. in this particular. I feel no inclination to disturb that decision, considering how much the public convenience is in its favour. I know not to what difficulties persons whose property is liable, and those who are bound to account, might be reduced, if we were to adopt a different construction. With respect to the objection, that the time may be too short to prepare for the appeal, if, upon any occasion, this should be made appear, the appeal may be lodged, and adjourned on a proper application." Bayley, J. "I think that the affirmative words of the 17 Geo. II. must be taken to imply a negative. If the statute had been silent as to the time of appeal, the 43 Eliz. would have attached; and it would have been open to the party to appeal at any time. But as the statute empowers the party to appeal to the next sessions, I think it virtually implies that he must appeal to those sessions, and to no other." Abbott, J. "I agree that this rule must be discharged. The construction put on these statutes by my Lord and my brother Bayley appears to be the true construction, conformably to the rule for the construction of acts of parliament so well laid down in the old cases, and adopted in *Rex v. Coode*." (a)

Rex v. Bartlett, 2 Str. 983. An order made at the sessions relating to accounts of overseers was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions. On the other side it was said that it appeared there was an allowance, for the appeal is said to be against the disbursements and the allowance thereof, which the court will presume was regular. But by the court: "It doth not follow that this was an allowance by two justices, for the parish might do it; and therefore, for want of jurisdiction, this order must be quashed."

Rex v. Justices of Dorsetshire, 15 East, 200. Soon after the 17th of May, 1811, when the respondents ceased to be overseers, the account of Goddard's, one of the respondents, receipts and payments as overseer, was submitted to the magistrates of the borough of Shaftsbury for their allowance, when Bowles objected to certain items, and stated, that if they were allowed, he should appeal against the allowance; and thereupon the justices refused the allowance of the said account, but did not strike out the items objected to, alleging that the stat. 50 Geo. III. c. 49, was not imperative upon them, but only authorized them to examine the accounts of overseers if they thought proper. On the 8th of July, and not before, the account was verified on the oath of Goddard before two magistrates of the borough, and by them allowed; and the said 8th of July was the last day permitted by the practice of the sessions for giving notice of appeals to the then next sessions, which were holden in the same month of July: and the items objected to still remaining in the account, Bowles gave notice of appeal against such account and allowance to the next subsequent sessions holden on the 8th of October, at which sessions, the justices, conceiving that the deponent ought to have appealed at the former sessions, dismissed the appeal. Lord *Ellenborough*, C. J. "It seems to the

(a) See further as to time of appeals, "*Appeal against Rates*," ante.

court that in every view of the case the *mandamus* should go, whether this be a proceeding under the 43 Eliz. or under the 17 Geo. II.; for supposing it to be under the 17 Geo. II. and supposing that statute in this respect to have repealed the 43 Eliz. (which from the cases cited seems by no means to be settled,) still under the circumstances of this case, we think the July sessions could not be considered the *next* sessions for the purpose of appealing; for the allowance by the justices was on the 8th of July, the last day when any effectual notice of appeal could have been given; and it does not appear when the appellant had any notice of such allowance; and the transaction seems to carry with it the marks of design to defeat the appeal." *Mandamus* granted.

Rex v. Thackwell, 4 B. & C. 62; 6 D. & R. 61; 3 D. & R. Mag. Ca. 337. In this case the overseers of Monmouth went out of office on the 25th March. Their accounts were allowed by three justices on the 27th. On the 7th April the next quarter sessions were held at Usk, thirteen miles from Monmouth. On the same day, at two o'clock, when it was too late to enter an appeal, they delivered their accounts, allowed as aforesaid, to their successors. At the following (Midsummer) sessions an appeal against the allowance of the accounts was entered, and *respite*, although the *respite* was objected to by the respondents; and at the Michaelmas sessions the order for the allowance was quashed. *Abbott*, C. J. "It is quite clear that, under the circumstances of this case, the parties were not bound to appeal at the Easter sessions, and at the Midsummer, it was for the justices and not for us to decide whether it would be proper to *respite* the appeal to Michaelmas." Order of sessions confirmed.

In *Rex v. Gwyer*, 4 Nev. & M. 158; 2 Adol. & Ell. 216 (*ante*, 245), it was contended that the appellant, not having been a rated parishioner during the whole of the year, could not appeal against such parts of the accounts as related to the expenditure before that period for which he was rated. But the court decided that he might appeal against the whole account, because he had an interest in all the money that came to the hands of the overseer. As the surplus of that money was reduced, the subsequent assessments upon him would be probably greater in proportion; and, therefore, if there was an illegal application of the fund, he is not precluded from objecting to it.

The 50 Geo. III. c. 49, s. 2, provides "That if such churchwardens or overseers, or any of them, shall feel themselves, himself, or herself aggrieved by the disallowance or reduction of any such charges or payments, and be desirous of appealing against any order in that respect made by any such two or more justices of the peace, it shall and may be lawful for him, her, or them, to enter an appeal against such order at the next general or quarter sessions to be holden next after the tenth day for the making of such order, he, she, or they having first paid or delivered over to the succeeding churchwardens and overseers such sum and sums of money, goods, chattels, and other things as on the face of the account which shall have been submitted by him, her, or them to such two or more justices in manner aforesaid shall appear and be admitted to be due and owing from him, her, or them, or remaining in his, her, or their hands, and having also entered into a recognizance before one or more such justice or justices with two sufficient securities to be approved of by such justice or justices before whom such recognizance shall be acknowledged, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter sessions, and abide by such order as shall at that or any subsequent sessions be made on such appeal; and it shall and may be lawful for the justices of the peace assembled at such general or quarter sessions, on proof of the matters aforesaid, and on the production of such recognizance and proof of the same having been duly entered into, to adjourn such appeal if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole or in part, as to such justices at such sessions shall seem just; and in any such case the said justices at such sessions may (if they shall think fit) make an order that such churchwardens and overseers shall have the costs by them incurred upon any such appeal defrayed out of the poor rates of the parish or place; and the order of the general

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The justices may *respite* the appeal, although the respondents do not complain of want of sufficient notice, and object to the delay.

A person has a right to appeal against all the accounts of the overseers though he has not been rated in every rate.

Churchwardens, &c. may appeal to quarter sessions against reductions made in their accounts.

Power to adjourn.

Costs.

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Appeal by any other person not taken away.

Magistrates of corporations shall have the same jurisdiction as two or more justices.

Proceedings of quarter sessions final.

Not to extend to churchwardens, &c., exempted from accounting under the recited acts.

Nor to the city of London.

Recited acts, unless where it is hereby expressly mentioned, not to be affected.

quarter sessions in the execution of the powers given to them by this act shall be binding on all parties."

Sect. 3 provides "That nothing herein contained shall take away or be construed to take away any power of appeal against any such account, by any other person entitled to appeal against the same by virtue of the said recited acts or either of them."

Sect. 4 enacts "That every mayor, bailiff, or other head officer of every town or place corporate and city in Great Britain, or any two magistrates of such town or place corporate or city, being justice or justices of peace respectively, shall have the same authority by virtue of this act within the limits and precincts of their jurisdictions as is by this act limited, prescribed, or appointed to justices of the peace of the county, or any two or more of them for the execution of this act; subject nevertheless to an appeal to the general or quarter sessions in every such town or place corporate or city respectively as aforesaid: provided always, that in any town or place corporate or city where there are not four justices of the peace, it shall and may be lawful for any person or persons, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such town or place corporate or city is situate."

Sect. 5 enacts "That no *certiorari* shall be granted to remove any order or proceeding of any general or quarter sessions, or of any justices, made or had under this act, into any superior court of record; but that all orders and proceedings of such sessions, and all orders and proceedings of such justices (subject to such appeal as aforesaid) under this act shall be final and conclusive to all intents and purposes."

Sect. 6 provides "That nothing in this act contained shall extend or apply, or be construed to extend or apply to the accounts of any churchwarden or overseer of the poor in any parish or place where by the provisions of any act or acts relating to the poor of such parish or place, or by the construction of any such act or acts, such churchwardens and overseers are exempted from the rendering the accounts required by the hereinbefore recited acts of the 43d year of the reign of her late majesty Queen Elizabeth, and of the 17th year of the reign of his late majesty King George II. or either of them; any thing hereinbefore contained to the contrary notwithstanding: Provided also that nothing in this act contained shall extend or be construed to extend to the city of London."

Sect. 7 provides also "That nothing in this act contained shall alter or repeal any of the provisions or regulations contained in the said recited acts of the 43d year of the reign of her late majesty Queen Elizabeth, and of the 17th year of the reign of his late majesty King George II. or either of them, other than and except only such provisions or regulations as are expressly mentioned in this act, and so far as the same are expressly amended or altered by this act."

It will be perceived that s. 5 (*supra*), prevents the orders and proceedings of justices from being removed by *certiorari* into the King's Bench, and makes the decision of the sessions *final*; but this only applies to appeals brought by churchwardens and overseers against the disallowance of any items in their accounts by the magistrates, leaving appeals *by other persons* as they stood under the prior act, 17 Geo. II. c. 38, s. 4. *Rex v. Bird and others*, 2 B. & A. 522.

Notice of Appeal.

Notice of appeal.
(a)

The 41 Geo. III. c. 23, s. 4 (which see *ante*, 219), prescribes that the notice shall be in writing, and shall specify the particular causes or grounds of appeal. The following decisions have taken place upon this enactment.

(a) See form of notice of appeal against overseers' accounts, *post*, Appendix.

A notice of appeal against the allowance of overseers' accounts, which is merely general, stating that the different items, enumerating all of them, will be objected to, without stating the particular cause or ground upon which any one was objected to, is clearly insufficient. The sessions overruled the objection, but reserved a case on the point; and the court quashed the order, on the ground that the notice was not sufficient. (*Rex v. Mayall*, 3 D. & R. 383; and 2 D. & R. Mag. Ca. 88.)

Rex v. Sheard, 2 B. & C. 856; 4 D. & R. 480; 2 D. & R. Mag. Ca. 261. By the notice of appeal, the appellant objected to thirty-five items in the accounts specified in the notice, and set out the names of the persons on whose account the payments were made, the sums paid, and in some instances the purposes for which they were made; it also stated that the appellant would insist upon the appeal that all these items ought to be struck out of the accounts and disallowed. On the day before the appeal came on to be heard, the attorney for the respondents and the attorney for the appellant entered into the following admissions: "We do agree to admit that all the payments charged in the accounts of the respondents to which the appellant objects, were actually made to or for the use of the several persons to whom the same are charged to have been paid, and that the several sums charged in such accounts to have been paid to three several persons (named in the notice of appeal) respectively, were for debts contracted by the overseers in one or more years previous to the year in which the respondents were overseers, and were not contracted by the respondents for the service of their current year, and the respondents undertake to produce upon the hearing of the appeal the original accounts and vouchers regarding the items and sums of money objected to by the appellant. The sessions considered the admissions as a waiver of the objections to it, and entered into the merits of the said appeal, but granted a case. Bayley, J. delivered the judgment: "The 41 Geo. III. c. 23, requires one of two things, either notice in writing stating and specifying the particular causes or grounds of appeal; or secondly, consent by the overseers, to be signified by them or their attorney in open court, that the sessions may proceed, though there has been no proper notice. The notice in writing is to be signed by the party giving it, or his attorney, and to be left at the place of abode of the officers; and the sessions are not to examine into any other cause or ground of appeal than those which the notice specifies. Two questions therefore arise, has there been such a notice as the statute requires? Has there been such a waiver? In this case the original notice which was served eleven days before the commencement of the sessions, merely stated that the appellant would object to thirty-five items or charges of payment, which he specified. On what grounds he would object he did not state. The day after the sessions commenced, being the day before their adjournment day, the attornies for the appellant and respondents agreed to admit that all the payments objected to were in fact made, but that three of them were for debts contracted in prior years, not for debts contracted for the service of the year to which the accounts referred, and the respondents agreed to produce the original accounts and vouchers regarding the items objected to. The sessions expressed no opinion as to the notice, but thought these admissions a waiver of all objections to it. As to the waiver, the statute expressly provides that the sessions shall not examine or enquire into any ground of appeal not specified in the notice, with this single exception only, of consent by the overseers, signified by them or their attorney in open court: and we think that the statute has excluded, and intended to exclude, all questions of waiver in any other way, and that as there was no such consent as the statute requires, we cannot enter into the question of any other species of waiver. Then can it be said that this notice states and specifies the particular causes and grounds of appeal? It states only that the appellant will object to thirty-five items or charges of payment; but why? It may be because they are false items that they have not been paid; it may be, because they ought not to have been paid; it may be, though paid, and rightly paid, they ought not to be brought in charge against the parish, but ought to be borne personally by the overseers. And

5. Appeals relating to Overseers' Accounts.

Where the notice is insufficient.

A notice of appeal against overseers' accounts, stated that the appellant objected to certain specified payments, alleged in the accounts to have been made to persons specified by name in the notice: Held, that the notice was bad, because it did not state the cause and ground of appeal. The attornies, some days before the appeal was tried, agreed to admit that the sums objected to were paid to the persons alleged: Held, that this was not any waiver of the irregularity in the notice.

5. Appeals
relating to
Overseers'
Accounts.

where a notice is general, and leaves it uncertain upon which of several possible grounds of objection an item is questioned, can we say that it states and specifies a particular ground? We think not. Then will the admissions supply the defect in this notice, not as a waiver, but as making it a good notice in itself? The statute prescribes no form of notice; it specifies no time within which it shall be delivered; and its only object being that the respondents may know distinctly what objections they are prepared to meet; and so long as that knowledge is fairly communicated to them in writing, it may be thought that the mode in which it is communicated is immaterial. But it can never be supposed that the respondents' attorney meant, by entering into these admissions, to waive any other objections, which would otherwise have been open to him; his authority would be to uphold the rights of the respondents, not to give them up; and where the statute requires notice in writing to be left at the place of abode of the persons on whom it is to be served, we think we ought not, except upon very clear grounds, to allow it to be dispensed with." Order of sessions quashed.

It is not necessary to state in the notice that the appellant is a party aggrieved or a parishioner.

A notice of appeal against overseers' accounts, merely stating that the party intended to try his appeal against the accounts, on the grounds and for the reasons thereafter set forth, and then specifying the items against which he intended to appeal, and the objection he intended to make against each item, was held to be sufficient, although it was not stated that the party intending to appeal was a rated inhabitant of the parish, or a party aggrieved. The right of appeal given by 17 Geo II. c. 38, s. 4, against overseers' accounts, is not within the principle of the decisions upon the 55 Geo. III. c. 68, s. 3, relating to highways; for although the same language to a certain extent is found in both, yet the former statute, in addition to giving an appeal to the "party aggrieved," extends the right to "any person who shall have any *material objection* to the accounts." Lord Tenterden added, "If it should turn out that he is a mere stranger, the court of quarter sessions may refuse to hear him." (*Rex v. Justices of Somersetshire*, 7 B. & C. 681.)

What is a reasonable notice.

A clear week's notice is usually considered "reasonable," and will satisfy the statute unless by the practice of the particular sessions a longer notice is required, or there are peculiar circumstances in the case which may induce the justices to adjourn the appeal to the following sessions. (2 *Nol. P. L.* 525.)

Accounts and disbursements of overseers allowed.

Rex v. Justices of Norfolk, 2 B. & Ad. 944. An appeal was entered in the following form:—*W. Rodgers*, appellant, and *The Churchwardens and Overseers of Brancaster*, respondents. The appeal was respited, and notice was given, addressed to "J. A. and T. S. now or lately overseers," but not to the churchwardens, and no notice was given to them. The sessions refused to hear the appeal, because the notice varied from the entry, and because the churchwardens had had no notice. Upon a rule for a *mandamus* it appeared that J. A. and T. S. were the only parish officers who received and disbursed money during the year of the accounts, and that the accounts were passed by them only, and were entered in their names only, as overseers, no mention being made of the churchwardens. It was held, that though the appeal was formally entered as an appeal against the accounts of the churchwardens and overseers, yet it was evident to any one looking at the subject-matter of the appeal, that it was substantially an appeal against the accounts of the overseers, and to them notice was given: and it was also held, that as the accounts of several parish officers may be treated as several, where the money transactions have been separate, (and in the present case the churchwardens had in fact nothing to do with the account,) it would have been useless to serve the notice upon them; and that therefore there was no valid objection to the mode in which the notice was addressed and served. *Mandamus* issued.

CHAPTER IV.

OF RECOVERING POSSESSION OF PARISH HOUSES
OR LANDS.*Of recovering
possession of
houses
summarily.*

THE 59 Geo. III. c. 12, s. 24, (a) recites "That difficulties have frequently arisen and considerable expenses have sometimes been incurred, by reason of the refusal of persons who have been permitted to occupy, or who have intruded themselves into parish or town houses, or other tenements or dwellings built or provided for the habitation of the poor, or otherwise belonging to such parishes, to deliver up the possession of such houses, tenements, or dwellings, when thereto required; and it is expedient to provide a remedy for the same;" and then enacts, "that if any person who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his or her absence affixed on some notorious part of the premises, it shall be lawful for any two (b) of his Majesty's justices of the peace, upon complaint to them made by one or more of the churchwardens and overseers of the poor of the parish in which any such house, tenement, or dwelling shall be situated, to issue their summons to the person against whom such complaint shall be made, to appear before such justices at a time and place to be appointed by them, and to cause such summons to be delivered to the party against whom the complaint shall be made, or in his or her absence to be affixed on the premises, seven days at the least before the time appointed for hearing such complaint; and such justices are hereby empowered and required, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as is hereby directed, to proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the parish, or to some of them."

Justices empowered, in certain cases, to deliver possession of parish houses to overseers.
Recovering possession of parish houses, &c.

Mode of proceeding.
See also 5 & 6 W. 4, c. 69, s. 5, Appendix.
Summons.

S. 25. "If any person to whom any land appropriated, purchased, or taken under the authority of this act, for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or to either of them, shall have been let for his or her own occupation, shall refuse to quit and to deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her; or if any person or persons shall unlawfully enter upon, or take or hold possession of any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, it shall be lawful for such churchwardens and overseers of the poor, or any of them, after such notice and demand of possession as is by this act directed in the case of parish houses, to exhibit a complaint against the person or persons in possession of such land, before two of his majesty's justices of the peace, who are hereby authorized and

Justices empowered to deliver possession of land appropriated for the poor.

(a) See the words of the statute, and formation and issue the summons. 3 cases, 1 Chitty's Col. Stat. 680, 847. Geo. 4, c. 23, s. 2.

(b) One justice may receive the in-

Of recovering possession of houses summarily.

Possession may still at common law be taken peaceably.

Lands purchased by churchwardens and overseers, to vest in them as a corporation.

required to proceed thereon, and to hear and determine the matter thereof; and if they shall find and adjudge the same to be true, to cause possession of such land to be delivered to the churchwardens and overseers of the poor, or some of them, in such and the like course and manner as are by this act directed with regard to parish houses."

The statute was not intended to take away a right, which the owner of property had at common law, to enter and take possession, if it could be done peaceably, but to provide an expeditious mode whereby parish officers might obtain possession where it was obstinately withheld; and that they might not do that which had before been sometimes done, viz., might not turn occupiers out *vi et armis*, which led to further expense and litigation. Where, therefore, a pauper had been permitted to occupy a parish house, but having gone from home, leaving three children there, for whose support she received an allowance from the parish, the overseers on the second day afterwards entered, took the children to the workhouse and put locks upon the doors. She having returned in about ten days, and, by breaking the locks, resumed possession of the house, the overseers went there, and, upon her refusal to open the door, broke it open, and carried away the furniture, which belonged to the parish. In an action of trespass by her, it was held, that the overseers might lawfully enter and resume possession, without giving any notice to quit, and were not bound to pursue the mode pointed out by the 59 Geo. III. c. 12, s. 24. (*Wildbore v. Rainforth*, 2 Man. & R. 185; 8 B. & C. 4; and see *Turner v. Meymott*, 7 Moore, 574; 1 Bing. 158; *Taunton & Costar*, 7 Term Rep.; 1 Price Rep. 4.) (a)

The 59 Geo. III. c. 12, s. 17, enacts, That all buildings, lands, and tenements, purchased or hired by churchwardens and overseers for the purposes of the act, shall vest in the churchwardens and overseers for the time being "in the nature of a body corporate." And this act is not confined to lands held merely for the benefit of the poor, as appears from the following decision. Lord *Tenterden*, in delivering the judgment of the court, observed, "These were demises in the name of the parish officers, and the tenements were certainly held for parish purposes. The lessors of the plaintiffs contended, that the premises were vested in the parish officers by the 59 Geo. III. c. 12. The other side contended, that the statute was inapplicable for two reasons; —1. Because the persons in whom the legal estate was vested were trustees only; 2. Because the profits of the premises were applicable, not to the relief of the poor, but solely to those purposes for which a church rate was levied. As to the first of these objections, we are of opinion that there is nothing in the act to limit the right of persons under that act to those who fill the situation of parish officers, and it would be highly inconvenient to give the act so limited a construction. It is often difficult for persons who claim under an ancient trust, (where the trustees are numerous,) to show who was the survivor of those trustees; and even if they should succeed in ascertaining that fact, it will not be less difficult to show who is the heir-at-law of that survivor. Upon the second point, whether this act extends to tenements the profits of which are applicable to the purposes for which church rate is levied, or is confined to those which are applicable merely for the benefit of the poor, it is undoubtedly correct, as that the primary object of the act was directed to tenements of the latter description. But s. 17 goes in its terms much further. It uses the words, 'and also all others.' To these there is no limitation. We think, therefore, that the safest course will be to give full effect to that generality of expression, as nothing appears to show that that which is held for the benefit of the church does not, under these circumstances, require the assistance of this act, as well as that which is held for the benefit of the poor. In both cases, the difficulty is the same; and we see no reason to doubt that the operation of the act was intended to be co-extensive with the mischief. (*Doe and Jackson v. Hiley*, 10 B. & C. 885.)

What is sufficient evidence of property belonging to the parish, *Doe v. Terry*, 5 Nev. & Man. 556.

(a) The paupers in a workhouse are than lunatics are the tenants of their not to be considered as tenants, no more cells. *Martin v. Goble*, 1 Camp. 321.

CHAPTER V.

OF THE POWERS, DUTIES, LIABILITIES AND PRIVILEGES OF OVERSEERS. (a)

*Of the powers,
duties, &c.*

IN the discharge of their various duties, churchwardens and overseers may occasionally be subjected to vexatious actions. To afford them protection, under such circumstances, the legislature has given them various advantages.

Privileges.

By 7 Jac. I. c. 5, if any action shall be brought against any *justice of the peace* or *constable*, (and by 21 Jac. I. c. 12, against any *churchwarden* or *overseer of the poor*, or other person who in their aid, or by their commandment, should do any thing concerning their offices,) he may plead the general issue, and give the special matter in evidence: and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs. (b) And such action shall be laid in the county where the act was committed, and not elsewhere.

May plead the
general issue, &c.

Double costs.
Venue local.

By 43 Eliz. c. 2, s. 19, persons sued for any thing done on that act, may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit.

Treble damages
with costs.

And by 24 Geo. II. c. 44, "No action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable, headborough, or other officer, and for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid."

No action to be
brought until
copy of warrant
demanded and
refused.

Jackson's case, *Loffl*, 249; *Bull. N. P.* 24. Trespass against overseers for taking the plaintiff's gelding. They alleged, that by virtue of their office,

Overseers of the
poor, and all offi-

(a) See *ante*, 30 to 34.

(b) This relates only to *torts* and acts done, and does not extend to a nonsuit in an action against overseers for the price of goods supplied for the use of the poor.

Blanchard v. Bramble, 3 M. & Sel. 131; *Atkins v. Bunwell*, 3 East, 92. As to the responsibility of overseers in cases of accident to paupers, see law fully stated, title "*Casual Poor*."

Of the powers, duties, &c.

cers acting under a justice's warrant, are within the protection of the 24 Geo. 2, c. 44.

Demand of surplus after distress.

and in pursuance of a justice's order, they levied satisfaction for a poor rate. It was objected, that demand should have been made of the perusal and copy of the justice's warrant, and six days' neglect or refusal, under stat. 24 Geo. II., and that it was a remedial act. The mischief was, that justices of the peace were often ensnared by surprise on some little inadvertency into which they had fallen, and the remedy given them was a power to rectify that inaccuracy or mistake; so as neither the person affected by it might suffer, nor the justice be vexatiously harassed. In order to this, notice is required by the statute, to give the party a power of tendering amends, bringing money into court, or pleading as he shall be advised. That *constables* and *headboroughs* are likewise, by the same act, not to be proceeded against, without demand and perusal of the warrant. That *churchwardens* and *overseers of the poor* are within the same reason, and therefore within the remedy, and comprehended under "*other officers*." By Lord *Mansfield* and the court: "They are clearly within the act of 24 Geo. II. The justice's warrant is the authority under which they act. To extend the benefit of the statute of 21 James, was the intent of the statute of 24 Geo. II., and all officers acting under a justice's warrant are included in it." Plaintiff was nonsuited.

A demand is necessary before an action can be maintained against overseers for the surplus arising from a distress for poor-rates. The 27 Geo. II. c. 20, s. 2, states, that the officer making the distress shall deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by the sale; and the overplus (if any) after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned *on demand* to the owner of the goods and chattels so distrained. And in this case, where a demand is necessary to give a right of action, the commencement of the action is not of itself a sufficient demand, nor does a tender of a sum, which the plaintiff at the time refused to accept, saying it was too late, but not claiming a larger sum, supply the place of a demand; there must be an express demand, or that which is equivalent to it. (*Simpson v. Routh*, 4 D. & R. 181; 2 B. & C. 682.)

Abuse of Office.

Remedies against abuse of office.

Punishable for neglect of duty.

The law very properly will not sanction overseers in refusing to receive and provide for a pauper sent to them by an order of justices, however satisfied they may be that such order cannot, upon being appealed against, be supported. For if this were permitted, the pauper might perish while his settlement was being disputed. It has therefore been held that overseers are indictable for not receiving a pauper sent to them by an order of justices. *Rex v. Davies*, 1 Bott, 378; S. C. cited and approved, 2 Burr. 803. And it appears that formerly, for very gross abuses in office, a criminal information might be obtained; but the Court came to the resolution, some time ago, to leave their official delinquencies, however flagrant, to the ordinary punishment by indictment. (*Rex v. Slaughter*, Cald. 247, note (a)). An overseer is not liable to any proceeding for neglecting to inoculate paupers so as to guard against the consequences. (*Anon.* 5 Nev. & Man. 12.)

In many instances penalties are inflicted, to be recovered by action, or levied on conviction by magistrates. See the enactments of 43 Eliz. c. 2, s. 2; 3 and 4 W. & M. c. 11, s. 10; 17 Geo. II. c. 5, s. 1; 19 Geo. III. c. 37; 56 Geo. III. c. 139, s. 6; and more particularly 33 Geo. III. c. 55, s. 1, *post*, 263.

The 43 Eliz. c. 2, s. 2, provides, that overseers absenting themselves without lawful cause from the monthly meeting therein enjoined, or being negligent in their office, shall forfeit for every default 20s. to the poor, to be levied by one of the churchwardens or overseers by warrant of two justices (one being of the quorum) by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain, without bail or mainprize, till the said forfeiture shall be paid.

But this penalty for not meeting in the church shall not be inflicted on overseers of extra-parochial places, because they have no church to meet in.

(8 Mod. 40.) Nor can an overseer be adjudged guilty of absenting himself from the meeting until he has had personal notice of his appointment. (*Rex v. Harman*, 1 Bott, 376; *ante*, p. 234, note.)

Of the powers, duties, &c.

If an overseer do not provide for the poor, he is indictable, *post*; and if he relieve the poor when there is no necessity for it, it is a misdemeanor. (*Tawney's case*, 16 Vin. Abr. tit. Poor, 415; 1 Bott, 371.)

Overseers indictable for not relieving poor.

By 17 Geo. II. c. 38, s. 14, it is enacted, "That if any churchwarden, overseer of the poor, or officer of any parish, township, or place, shall neglect or refuse to obey and perform the several orders and directions of this act or any of them, where no penalty is before provided by this act, or shall act contrary thereto; every such churchwarden, overseer of the poor, or other officer so offending in the premises, shall for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two or more of his Majesty's justices of the peace, forfeit for the use of the poor of such parish, township, or place, a sum not exceeding 5*l.* nor less than 20*s.*, to be levied by distress and sale of the offender's goods, by warrant from such justices; which sum shall be paid to some churchwarden or overseer of the poor of such parish, township, or place, for the purpose aforesaid."

Penalty of 20*s.* and not exceeding 5*l.*

By 33 Geo. III. c. 55, s. 1, it is enacted, "That it shall and may be lawful for any two or more of his Majesty's justices of the peace, assembled at any special or petty sessions of the peace, upon complaint being made upon oath before them of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice or justices of the peace by any constable, overseer of the poor, or other peace or parish officer, or upon complaint made to such two or more justices upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township or otherwise, provided that not more than the sum of 10*l.* be paid upon the binding of such apprentice, against his or her master or mistress, of any ill usage of such apprentice by such master or mistress (such constable, overseer, or other officer, master or mistress, having been duly summoned to appear and answer such charge or complaint), to impose upon conviction, any reasonable fine or fines, not exceeding the sum of 40*s.* upon such constable, overseer, or other officer, master or mistress respectively, as a punishment for such disobedience, neglect of duty, or ill usage, and by warrant under the hands and seals of any two or more of such justices assembled at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any) after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offenders; and such fine or fines which may be imposed upon any such constable, overseer, or other officer as aforesaid, shall be applied and disposed of for the relief of the poor of the parish, township, or place, where the offenders shall respectively reside, at the discretion of the justices imposing the same; and such fine or fines, which may be imposed upon any such master or mistress, shall, at the discretion of the justices imposing the same, be either so applied and disposed of aforesaid, or be otherwise paid and applied to or for the use and benefit of such apprentice, for or towards a recompence or compensation for the injury which may have been by him or her sustained by reason of such ill usage as aforesaid; and if any person shall be aggrieved by the imposition of such fine or fines as aforesaid, or by any order or warrant of distress for raising and levying the same, or by the judgment or determination of the said justices, or by any act to be done in the execution of such warrant of distress, such person or persons so aggrieved shall and may appeal to the next general or quarter sessions of the peace to be held for the county, riding, or division, within which such person shall reside, of which appeal ten days' notice at the least shall be given; and for want of such distress, such person or persons shall be committed to the house of correction for any space of time not exceeding ten days."

Punishment for neglect of duty, or disobedience of order of justices.

Sect. 2 provides that no person acting under any such warrant of distress shall be deemed a trespasser *ab initio*, by reason of any irregularity in such warrant or proceedings thereupon.

*Of the powers,
duties, &c.*

Appeal.

Witnesses.

Contracts of
overseers.

Any person who thinks himself aggrieved may appeal to the next sessions, upon giving ten days' notice thereof.

A penalty is imposed on overseers who neglect to publish the rules of commissioners, 4 & 5 Will. IV. c. 76, s. 18.

And by 3 W. & M. c. 11, s. 12, in all actions to be brought in the courts at Westminster, or at the assizes, for the recovery of any sum mis-spent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.

The overseers are liable, like all other persons, upon their contracts, express or implied, for necessities furnished to the use of the poor or otherwise, in the common action of *assumpsit*; and they are liable in damages for acts done by them without authority or in abuse of their office. (See *Simmons v. Wilmot*, 3 Esp. Rep. 92; *Lamb v. Bunce*, 4 M. & S. 275.) An overseer proceeding through all the stages of an expensive suit, without the concurrence of the vestry, is personally liable. (*Rex v. Micklefield*, Cald. 507, ante.)

Overseers not to be concerned in Contracts relating to the Poor.

Persons having the management of the poor not to be concerned in contracts, &c. whilst in office. (a)

The overseers of one parish may give a bond of indemnity to the overseers of another parish against costs, charges, and expenses which may be incurred by reason of a pauper of one parish becoming apprentice to a resident in the other. (*Hill v. Eastaff*, 6 B. 170.)

One overseer is not liable for the other's voluntary contract. (*Rex v. Justices of Gloucester*, 1 B. & Adol. 2, per Parke J.) But where a joint duty is imposed they may be so. (*Rex v. Essex*, 3 B. & Adol. 941; and see *Eden v. Titchmarsh*, 3 Nev. & M. 712.)

The 55 Geo. III. c. 137, s. 6, (a) enacts, "That from and after the twenty-fifth day of March next after the passing of this act, no churchwarden or overseer of the poor, or other person or persons in whose hands the collection of the rates for the relief of the poor, or the providing for, ordering, management, control, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall or may be placed jointly with or independent of such churchwardens and overseers, or any of them, under or by virtue of any act or acts of parliament, shall, either in his own name, or in the name of any other person or persons, provide, furnish or supply for his or their own profit, any goods, materials or provisions, for the use of any workhouse or workhouses, or otherwise, for the support and maintenance of the poor, in any parish or parishes, township or townships, hamlet or hamlets, place or places, for which he or they shall be appointed as such, during the time which he or they shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract or contracts relating thereto, under pain of forfeiting one hundred pounds, with full costs of suit, to any person or persons who shall sue for the same by action of debt, or on the case, in any of his Majesty's courts of record at Westminster; in which action or actions no essoign, protection, wager of law, or more than one imparlance shall be allowed: provided nevertheless, that if it shall happen in any parish or parishes, township or townships, hamlet or hamlets, place or places, that a person or persons competent and willing to undertake the supply of any of the articles or things required for such workhouse or workhouses, or for the use of the poor there, cannot be found within a convenient distance therefrom, other than and except some or one of the churchwardens and overseers of the poor, or other person or persons having the ordering, managing, controul or direction of

Penalty 100*l.*

Exceptions in
certain cases.

(a) See the statutes and notes of decisions, 1 Chitty's Col. Stat. 840. An assistant overseer is within this act, (*Bennett v. Edwards*, 1 Man. & R. 482; 7 B. & C. 586; 6 Bing. 230; 3 Young &

J. 464. S. C.) A parishioner, *ipso facto* a guardian of the poor, though he do not act as such, is within the act. (*Stanley v. Dodd*, 1 D. & Ryl. 397.)

the poor, in such parish or parishes, township or townships, hamlet or hamlets, place or places, then and in every such case it shall and may be lawful to and for any two or more neighbouring justices of the peace (proof thereof having been first duly made before them upon oath, and which oath such justices or any one of them are and is hereby authorized and empowered to administer) by certificate under their hands and seals, to permit and suffer any one or more of such churchwardens and overseers, or other such person or persons as aforesaid, to contract and agree for the furnishing and supplying of any articles or things which may be required for such workhouse or workhouses, or otherwise, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places, during the time which he or they may retain such appointment; any thing herein contained to the contrary notwithstanding; and such certificate shall be entered with the clerk of the peace, or town clerk of the county, city, town or district, in which such person or persons shall reside, and a copy thereof left with him, for which entry every such clerk shall receive one shilling and no more; and, from that time, every person and persons named in any such certificate shall be discharged from any penalty to which he or they would otherwise be liable under this act, for furnishing or supplying any such article or things as aforesaid; and in case any action or suit for the recovery of any such penalty as aforesaid shall be commenced against any person or persons to whom such certificate shall have been granted as aforesaid, it shall and may be lawful to and for such person or persons to plead generally, that he or they was or were duly discharged from any liability to such forfeiture, by a certificate granted according to the provisions of this act; and upon due proof being given of such certificate, and of such entry thereof as aforesaid, the jury shall find a verdict for the defendant in such action or suit; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her or their action, or if verdict shall pass against him, her or them, or if judgment shall be had against him, her or them, on demurrer, then the defendant or defendants in such action shall have double costs, and have such and the like remedy for the recovery of the same as any defendant or defendants have or hath for recovering costs of suit in any other cases by law."

*Of the powers,
duties, &c.*

The remedies and penalties of this act are extended to every commissioner, guardian, treasurer, master of the workhouse, and other officers appointed under 4 & 5 Will. IV. c. 72. Several actions of debt for the penalty have been brought, and the following points decided under this statute.

Extended to officers appointed under 4 & 5 W. 4, c. 72.

And by s. 77, it is enacted, "that no person filling any office concerned in the administration of the laws for the relief of the poor, shall supply, for his own profit or on his own account, any goods, materials or provisions ordered to be given in parochial relief, or in respect of the money ordered to be given in parochial relief to any person in such parish or union, under a penalty of five pounds, on conviction before two justices.

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief.

Several actions have been brought to recover penalties under 55 Geo. III. c. 137.

Proctor v. Mainwaring, 3 B. & Adol. 145. The defendant, an overseer, kept a chandler's shop, and paid the pauper her allowance on several occasions partly with goods from his shop and partly with money. The jury found that the pauper voluntarily took part in goods. *Abbott, C. J.* after remarking that this penal clause must not be extended to cases which may be suggested as falling within the mischief, added, "that *this* case was not within the statute. It would have been easy for the legislature, had they so intended it, to have said that it should not be lawful for an overseer to deliver to any pauper articles in lieu of money ordered for relief, but they have not so expressed themselves." *Bayley, J.* said, "The object of the act was to prevent imposition upon the parish by the overseers. If, therefore, goods are required for the parish workhouse, or if any other general supply for the poor is wanted, the overseer is not to furnish that supply; but it seems to me these are the only cases contemplated by the act. Where a pauper carries an order for relief to the overseer, he has a right to demand it in money; and, in case of refusal, has a speedy remedy, by complaint to the justice who made the order. If the conduct of

Supply of goods to individual paupers not in the statute.

Of the powers, duties, &c.

An overseer, a glazier, repairing a window of a workhouse, and supplying glass, is not liable to the penalty.

I. S. being the master of the workhouse appointed by, and receiving orders from, the guardians of the poor of the parish of W., bought provisions from A. B., one of such guardians: Held, that A. B. was liable to the penalty of 100*l.* imposed by statute 55 Geo. 3, c. 137, s. 6.

It is no defence that the articles were furnished at a fair market price.

A guardian of the poor appointed under 22 Geo. 3, c. 83, is within the 55 Geo. 3, c. 137, s. 6, notwith-

the overseer in selling the articles be oppressive, the justice may punish him for it; but if the overseer be absolutely prohibited from selling, it might be a hardship upon the pauper. For there being no words distinguishing the case of money laid out by the pauper, after full payment by the overseer, from that of a payment partly in goods and partly in money, a pauper might be compelled, in case the overseer kept the only shop in the village where the articles were supplied, to go to a very inconvenient distance for the purpose of purchasing them from some one else." *Holroyd, J.* "However desirable it may perhaps be, to prevent the mischief attending such cases as the present, yet we cannot extend a penal statute so as to bring this case within it. The words of this statute appear to me applicable only to a general supply of the poor by the parish officers."

Barber v. Waite, 3 Nev. & M. 611; 1 Ad. & E. 514. This was an action for penalties against the defendant, a plumber, painter and glazier, who was also overseer of Boston, and while holding that office had repaired the windows of the workhouse. In so doing he supplied glass, lead pipe and paint, and was paid for it and his labour by the parish, and it was held that this was not within the statute. That the words "for the use of the workhouse," mean for the use of the persons in the workhouse. It was also observed, that the thing did come properly under the description of work and labour, and not of goods supplied; and that work and labour was not within the meaning of the act. In *West v. Andrews*, (*infra*), sheep were supplied, which came within the act, as they were provisions, though something remained to be done to make them fit for consumption. Coals also are within the act; and so is any thing in respect of which an action for goods sold would lie. In this case, it is true, glass, paint, and other things were supplied, but the contract was substantially for work and labour, and materials used in the course of it. If the defendant had declared in assumpsit for the repairs done by him, a count for goods sold would not have been applicable. Verdict for defendant.

West v. Andrews, 5 B. & Ald. 328. The defendant was one of the guardians of the poor, the poor-house was under their controul, being managed by one Griffiths, who was the master of the poor-house appointed by the guardians, and receiving his orders from them. Griffiths having a contract at so much per head, found all the meat, and he bought of the defendant, then being a guardian, four live sheep for the use of the poor, and paid him for them. *Abbott, C. J.* "Here the defendant has made a bargain for the supply of provisions with a third person, who has the contract for providing for the poor, and whom the defendant, in conjunction with others, appoints to his situation, and whose conduct it is his duty to superintend. Under these circumstances, it seems to me, that all the mischief which was contemplated by the legislature would arise, if we were to hold that it was lawful. I am therefore clearly of opinion, that the defendant's case falls both within the words and spirit of the act of parliament."

Pope v. Backhouse, 2 B. Moore, 186; 8 Taunt. 239, S. C. The defendant was a farmer, and had supplied corn and flour to some of the poor of the parish for which he was churchwarden, and the jury found that he sold it only at a fair market price; and it was contended, that to bring the case within the statute, it was necessary for the jury to find that the defendant sold at a profit. *Gibbs, C. J.* "It is to be presumed that a farmer does make a profit by selling the produce of his land at a fair market price. If a churchwarden or overseer purchase provisions at a certain price, and afterwards, in the event of a scarcity which presses on the poor, let them have them at that price, he would not come within the act; but if he should sell them to the poor as he would to other individuals, at the market price, and make a profit on them, he would be within the act. The defendant is certainly liable, and the verdict properly entered for the plaintiff." The rest of the court concurred.

West v. Andrews, 1 B. & C. 77; 2 D. & R. 184; 1 D. & Ryl. Mag. Ca. 213, S. C. There were several counts in this action, but the third stated that the defendant was a person in whose hands the providing for, ordering, management, control, and direction of the poor of the parish of Westhampnett

was placed, by virtue of certain acts of parliament, and that the goods were supplied for the use of the poor of the said parish. The defendant was guardian of the poor of the parish of Westhamprett. The poor of that parish, together with the poor of four parishes, were jointly maintained in a workhouse, but Westhamprett was regularly united according to the 22 Geo. III. c. 83, s. 43, with only one of those parishes. The provisions were supplied to the master of the workhouse, who bought of the defendant four sheep for the use of the poor, and paid him for them. The master of the workhouse had a contract for providing for the poor at so much a head, and found all the meat, &c. *Abbott, C. J.* "If the evidence given be sufficient to sustain any one count, there ought not to be a nonsuit entered. The first objection is, that this was provided for, and must fall under 22 Geo. III. c. 83, s. 42. But if 53 Geo. III. c. 137, s. 6, does not extend to a case like the present, a great many words in it would be altogether insensible. For that clause speaks of persons having the providing for, ordering, management, control, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places. It therefore clearly extends to persons having the control of the poor in more parishes than one, and applies, as it seems to me, to the present case. The next objection is, that the character of the defendant is not properly described. He is described in the third count as a person in whose hands the providing for, ordering, management, control, and direction of the poor of the parish of Westhamprett was placed. How is that allegation sustained? It appears that under *Gilbert's act*, (22 Geo. III. c. 83,) where more parishes than one are united, every guardian of the poor appointed under that act, has, and is invested with, all the powers and authorities given to overseers of the poor by any act of parliament, and is to all intents and purposes, except with regard to the making and collecting rates, an overseer of the poor for the parish for which he is appointed guardian. If then this defendant was lawfully appointed guardian of the poor of Westhamprett, he is a person in whose hands was placed the control of the poor of that parish for which he was so appointed guardian. The objection, therefore, that his character is improperly described, cannot prevail. The last objection is, that in the third count the supply is stated to have been for the support and maintenance of the poor of the said parish; whereas by the proof it appears to have been for their support and maintenance in the workhouse, and it is urged that as the 55 Geo. III. c. 137, s. 6, describes these as two distinct classes, the allegation should have strictly conformed to the proof. I am by no means satisfied that this objection, even if taken at *nisi prius*, could have prevailed. But I am clearly of opinion, that a mere formal objection of this sort, if not so taken, cannot be available afterwards. I think, therefore, that all the objections are insufficient." *Bayley, J.* "The 55 Geo. III. c. 137, s. 6, seems to have been intended as a general provision, and the legislature could not have meant that there should be one rule for parishes united under 22 Geo. III. c. 83, and another in cases of parishes not so united. It may be true, that this case would have fallen under *Gilbert's act*, previously to 55 Geo. III.; but the latter statute, when passed, contained a general provision, within which this case, if not excepted, would fall. I can see no reason for any such exception being made, and in the absence of any express exception, it seems to me that no exception can be implied from *Gilbert's act*. I am also of opinion that a guardian appointed under 22 Geo. III. is clearly a person having the ordering, management, control and direction of the poor of the parish for which he is appointed, and that he falls under the provisions of the 55 Geo. III. The guardians have the power of recommending the master of the workhouse, and may make agreements with respect to the diet of the poor over which they are to exercise a strict control. It is the duty, therefore, of each of them to take care that wholesome food is supplied. Now all these objects will be defeated if the guardian, who is to inspect the conduct of the governor, supplies the workhouse with provisions. The case, therefore, is clearly within the mischief to be remedied. As to the objection that the declaration does not sufficiently describe the persons for whose care and support the goods were supplied, it seems to me that the allegation is substantially

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standing the former act, s. 42, imposes a penalty for the supply of the provisions for the poor by such guardian.

Where a count stated that A. B. supplied the poor of the parish of W. with provisions, and the evidence was, that he supplied the poor of the parish of W., and other parishes in a workhouse: held, first, that it was no variance, the proof being larger than the allegation.

Secondly, that the objection as to a variance between the allegation of a supply of the poor, and the proof of a supply of the poor, in the workhouse, not being taken at *nisi prius*, could not be afterwards available.

*Of the powers,
duties, &c.*

Though an overseer is not liable unless he sell with a view to profit.

proved, for if a person supplies the poor of any parish, it is immaterial whether he supplies them in or out of the workhouse; and if he supplies a workhouse which contains the poor of the parishes, A., B., C., and D., he does in fact supply the poor of each of these parishes." *Holroyd, J.* "I am of the same opinion. The 55 Geo. III. c. 137, is not confined to cases not falling under Gilbert's act. The words seem intended to include cases like the present, and we ought to give them a liberal construction, so as to remedy the mischief contemplated. It is contended that inasmuch as this defendant was only guardian of the poor, he was not charged with the maintenance of the poor of this particular parish, and that the allegation to that effect in the declaration is not proved. It appears, in fact, that he had a control over the maintenance of the poor of the parish. And as to the description of his character in the declaration, it is sufficiently proved by the evidence; for in pleading it is not necessary that the allegation should be as extensive as the proof. Where a prescription is pleaded for a right of common for sheep, and the proof is of a right for all commonable cattle, it is sufficient; (a) and so here the allegation is, that he had the ordering and direction of the poor of one parish, and the proof is, that he had the ordering and direction of the poor of that parish and others. As to the third objection, I agree with my Lord Chief Justice, that it not being taken at the trial, it cannot prevail now." *Best, J.* concurred.

Skinner v. Buckee, 3 B. & C. 6; 4 D. & R. 628; 2 D. & Ryl. Mag. Ca. 360, S. C. The defendant was a coal merchant, and overseer of the liberty of Saffron Hill, &c.; and during the time that he was overseer, coals were provided for the workhouse nominally by the brother-in-law of the defendant, but the latter had an interest in them. The jury found that the defendant did not send in the coals with a view of making a profit. *Abbott, C. J.* "The question in this case arises upon the construction of the 55 Geo. III. c. 137, s. 6; the words are, that 'no churchwarden or overseer of the poor, either in his own name, or in the name of any other person or persons, shall provide, furnish, or supply, for his or their own profit, any goods, materials, or provisions, for the use of any workhouse, or otherwise for the support or maintenance of the poor in any parish or place for which he shall be appointed such overseer, during the time which he shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l.* Now if the overseer himself in this case had supplied all the provisions required for the support of the poor at prime cost, and not with a view to his own profit, it is quite clear that he would not have committed any offence within the words of this part of the act of parliament: that was laid down by *Gibbs, C. J.* in *Pope v. Backhouse* (*ante*, 266). Inasmuch, therefore, as an overseer, providing in his own name the poor of his parish with all the provisions and goods required for their support, would not be liable to any penalty, provided he made no profit, it cannot be supposed that the legislature intended that the same overseer who is concerned directly or indirectly in any contract for supplying any part of the provisions, however small, should be liable to a penalty, although he derived no profit from it; that would involve a manifest contradiction. I think, therefore, that the words, 'for his own profit,' must be taken to override the whole clause; and that the legislature intended that no overseer for his own profit, either in his own name, or in that of any other person, should supply the poor with provisions, nor be concerned, directly or indirectly, in any contract relating to it." And the court refused to disturb the verdict found for the defendant.

(a) See *Bushwood v. Pond*, Cro. Eliz. *Bailiffs, &c. of Tewkesbury v. Bricknett*, 722; *Bruges v. Searl*, Carth. 219; 1 Taunt. 142.

CHAPTER VI.

OF THE SETTLEMENT OF THE POOR.

This branch of the poor laws is divisible under the following heads :—

- I. *Of Settlements in General.*
- II. *Of Settlements by Birth.*
 1. *Of a legitimate Child.*
 2. *Of a Bastard.*
- III. *Of Settlements by Parentage, and herein of Emancipation.*
- IV. *Of Settlements by Marriage.*
- V. *Of Settlements by Hiring and Service, abolished prospectively by 4 & 5 W. 4, c. 76, s. 64, 65.*
- VI. *Of Settlements by Apprenticeship.*
- VII. *Of Settlements by Renting a Tenement.*
- VIII. *Of Settlements by Estate.*
- IX. *Of Settlements by Office, abolished prospectively by 4 & 5 W. 4, c. 76, s. 64.*
- X. *Of Settlements by Payment of Rates.*
- XI. *Of Settlements by Acknowledgment by Certificate.*
- XII. *Of Settlements by Relief.*
- XIII. *Of Settlements by Removal unappealed against.*

I. *Of Settlements in General. (a)*

THE recent act, 4 W. 4, c. 76, has made but little alteration in the law of settlement, excepting that the sections, 64 and 65, will prevent the acquiring a settlement by *hiring and service*, or by *office*, after the passing of that act, see *post*.

(a) The law relating to the binding and ordering of *parish* and other *apprentices* is stated under title *Apprentices*, Vol. I. The *filiation* and *maintenance* of *bastard* children is also given in Vol. I., see title *Bastards*. And the laws by which the *ordering* of servants and other workmen is regulated will be found under title *Servants*, Vol. V.

Whatever relates to the *settlement* of the individuals of any of these classes

will be here treated of under the proper heads.

As the Poor Laws, or at least those parts which relate to *settlements*, are administered chiefly by the magistracy of the kingdom, it may be convenient to repeat in this place the 16 Geo. II. c. 18, which enacts, s. 1, "that it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise,

1. *Settlements in general.*

1. *Settlements in general.*

Definition of a settlement.

"By the term *settlement* is to be understood a permanent indestructible right to take the benefit of the poor laws in a particular parish or place which maintains its own poor."—*Gambier on P. r. Sett.* 1.

"A settlement is the *right acquired* in any one of the modes pointed out by the poor laws to become a recipient of the benefit of those laws, in that parish or place, which provides for its own poor, where the right has been *last acquired*. It is not *forfeitable*, and may be *communicated* from person to person, notwithstanding an attainder, which works a forfeiture of most civil rights." (*Rex v. St. Mary, Cardigan*, 6 T. R. 116. (a)) Though it ceases, and is *destroyed for ever* in the parish or place where it once existed, upon the acquisition of the same right, or any other new right, in any other such parish or place. It will be observed that, from the *language* of the acts, 13 & 14 Car. 2, c. 12, and the other statute relating to the removal of paupers, *post*, (26th edit. 705 to 711), that a pauper is always to be removed to the parish where his *last settlement* was acquired; so that where a person may have *successively* acquired *several* different settlements he has *no option*, but must seek relief in the parish where he acquired his *last settlement*.

By the earliest statute on this subject (12 Rich. II. c. 7,) in which punishment was awarded against beggars able to serve, and provision made for impotent beggars, the poor were to repair, in order to be maintained, to the places where they were *born*. By 11 Hen. VII. c. 2, beggars not able to work were to resort to the *hundred* where they last *dwelled*, or *were best known*, or *were born*; and by 19 Hen. VII. c. 12, to where *born*, or to where they had made their last abode by the space of three years. By 1 Ed. VI. c. 3, this was explained to be, where they had been *most conversant* by the space of three years. By 1 Jac. I. c. 7, they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where they *last dwelt* by the space of one year; if that could not be known, then to the place of their *birth*. So that beggars not able to work were to be maintained where they were born, or where they had inhabited,—*first*, for any indeterminate time, *next* for three years, and lastly for *one year*. In *Rex v. Inhabitants of St. George, Exeter*, 5 Nev. & Man. 66, Denman, C. J. said, "At the time of passing 43 Eliz. c. 2, there was no law of settlement, nor could the children of paupers, if at a distance from their parents, be sent home by the parish officers."

Poor people going from one parish to another.

This last regulation as to the place where paupers were to be supported, continued to the time of 13 & 14 Car. II. c. 12, by which after reciting

borough, or town corporate within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid."

Sect. 2 enacts, "That no act or acts, matter or matters, thing or things, which hath or have been before the making this act done, made, or executed by any such justice or justices of the peace, shall hereafter be quashed or declared void, because the same hath or have been

so made, done, or executed by any such justice or justices so rated or chargeable as aforesaid; any law, usage, or custom whatsoever to the contrary notwithstanding."

Sect. 3 provides, "That this act, or any thing therein contained, shall not authorize or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place, where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing herein contained to the contrary in any wise notwithstanding."

(a) A settlement is not a property. *Ibid.* and *post*. It is not at all analogous to an inheritance. *Per Lord Ellenborough*, (*Rex v. Haddenham*, 15 East, 460, *post*, 289.)

that "Whereas the number of poor within England and Wales is very great and burthensome; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers:" it is enacted, "that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

By the above act any person might gain a settlement by *residence of forty days in the parish*. But by 1 Jac. II. c. 17, the forty days were to be reckoned from the delivery to the parish officers by the new comers of a *notice* of the place of abode and the number of the family; and by 3 & 4 W. & M. c. 11, from the *publication* of such *notice* in the church. The object of this regulation was *notoriety*, in order that persons likely to be chargeable might be removed. But the latter act contemplated four cases in which no notice was to be given. First, when the person had served an annual office. Secondly, when he had *paid* parish rates. Third, when he had been *hired* (and by 8 and 9 W. III. c. 30, s. 4, *served*) for a year, being unmarried and having no children. And fourthly, persons *bound apprentice* by indenture. Notice however was never necessary when the tenement on which the person came to settle was of more than 10*l.* value by the year. The power of gaining a settlement by delivery and publication of such notice was altogether taken away by 35 Geo. III. c. 101.

Wherever a district of known limits contributes to one common fund raised within it, and which is disbursed within it, for the relief of its own poor, this right may be acquired, whether such district be a parish, a township, or hamlet, even though the township or hamlet be extra-parochial, for overseers may be appointed to an extra-parochial township or village. (*Rex v. Rafford*, 1 *Stra.* 512.)

The above rule has at different times been modified in favour of parishes in which prisons, hospitals, and other public charitable institutions are situated. The provisions to this effect in local acts have given way to the following general enactment.

By 54 Geo. III. c. 170, it is enacted, "That all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late majesty, Geo. I., whereby an alteration is made in respect of gaining or not gaining a settlement within any particular district, parish, township, or hamlet, shall be, and the same are hereby repealed; and that all and every person shall be deemed and taken to have acquired and to acquire a settlement in every such district, parish, township, or hamlet, by any ways and means, he, she, or they would or might have done, or would or might do, in case such act or acts, or any of them, had not been made and passed; and notwithstanding the same or any of them are or was in force and operation."

Sect. 2 provides, "That no person shall be deemed or taken to acquire any settlement in any district, parish, township, or hamlet, by reason of such person being born of the body of any mother actually confined as a prisoner within the walls of any prison; or any house licensed for the reception of pregnant women, in pursuance of an act made and passed in the thirteenth year of his present majesty's reign, for the better regulation of

1. *Settlements in general.*

How to be removed to the parish where last settled.

In what place a settlement may be gained.

All enactments and provisions in respect of gaining settlements contained in local acts repealed.

Persons born in prisons, or houses licensed for the reception of pregnant women, not to gain a settlement thereby.

1. *Settlements in general.*

Provisions respecting settlements by reason of birth in any poorhouse or house of industry belonging to united parishes.

Prisoners for debt or contempt not to gain settlements while in custody.

No gate-keeper or person residing in any toll-house to gain a settlement thereby.

No person maintained in any charitable institution, to gain any settlement by residence therein.

Building hired under 59 Geo. 3, c. 12, taken to be in the parish, &c., hiring, in questions of settlement. (a)

Who can acquire a settlement.

It is not every person who has a settlement.

Foreigners.

lying-in-hospitals, and other places appropriated for the charitable reception of pregnant women, in which any such prison or house shall be situated."

Sect. 3 provides, "That whensoever any person shall be born of the body of any poor person in any house of industry, or house for the reception and care of the poor of any district, parish, township, or hamlet which shall be locally situated in any district, parish, township, or hamlet, contributing to the expenses of maintaining the poor in such house, or in any other district, parish, township, or hamlet, not contributing to such expense, such person shall, so far as regards the settlement of such person, be deemed and taken to be born in the district, parish, township, or hamlet, by whom the mother of such person was sent to, and on whose account the mother of such person was received and maintained in such house."

Sect. 4 provides and enacts, "That no person shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, parish, township, or hamlet, on any civil process, or for any contempt whatsoever."

Sect. 5 provides and enacts, "That no gate-keeper or toll-keeper of any turnpike-road or navigation, or person renting the tolls and residing in any toll-house of any turnpike-road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet." (The general turnpike act, 3 Geo. IV. c. 126, s. 51, is to the like effect.)

Sect. 6 provides and enacts, "That no person or persons shall gain any settlement in any district, parish, township, or hamlet, by reason of any residence in any house or other dwelling-place provided for the residence of such person or persons by any charitable institution, while such person or persons shall be supported and maintained at the expense of such charitable institution as an object or objects of such charity."

And by 59 Geo. III. c. 12, s. 11, it is enacted, that every house and building which shall be purchased or hired under the authority of that act, (*vide*, sections 8, 9, 10, 14, 15, 16, 17, and 18, *ante*.) shall in all questions relative to the settlement of persons born or lodged therein, be deemed and taken to be part of the parish, on behalf of which the same shall be purchased or hired, and by which the same shall be used as a poorhouse or workhouse.

By 1 & 2 W. 4, c. 42, which enables the parish officers to provide land for the employment of the poor, and inclose waste lands for cultivation, it is provided by the fifth section, that no poor inhabitant of the parish to whom land shall be let which shall have been hired or inclosed under that act, shall gain a settlement by renting, or occupying or paying parochial taxes for such land either alone or with any other land or tenement.

Similar power is given by the 1 & 2 W. 4, c. 59, for inclosing land belonging to the crown; and that act contains the same restriction as to gaining settlements.

By the 4 & 5 W. 4, c. 76, s. 33, (see Appendix), the guardians of the parishes forming any union are empowered to agree that, for the purpose of settlement, such parishes shall be considered as *one* parish.

A settlement attaches to those persons only, concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. It is not universally true that *every* person in this country *must have a settlement* to which he may be removed, for bastard children born in an *extra-parochial* place which is not a vill, have no settlement, nor foreigners who come into this country. (*Rex v. St. Nicholas, Leicester*, 2 B. & C. 889; 4 D. & R. 462.) Such persons are denominated *casual* poor, and must be provided for in the parish where they happen to be. See *Casual Poor*, *ante*, 88 to 100.

Although a *foreigner* has not necessarily a settlement in this country, he *may acquire one* in some of the modes by which natural born subjects obtain this privilege; thus, the wife of a foreigner was removed to *Eastbourne* (the place of her maiden settlement), from *Seaford*, where he had for two years before, and at the time of the removal, resided, and rented a house of above

(a) See *Rex v. St. Peter and St. Paul, Bath*, *ante*, 41.

the value of 10*l.*, exercising the trade of a baker. The husband acquiesced in the removal, and accompanied them to *Eastbourne*. The sessions confirmed the order of removal, and the question was, whether a foreigner can gain a settlement in this country? *St. Giles's v. St. Margaret's* was cited, and it was urged that the 13 & 14 Car. II. referred only to the poor of *this* kingdom, i. e. England and Wales. *Per Lord Ellenborough, C. J.* "This man was not an alien enemy, but a German by birth, an alien *amy*. And as such, though he may not take a lease (a) of a dwelling-house or shop, by reason of the statute 32 Hen. VIII. c. 16, yet he may occupy a tenement of 10*l.* a-year, and carry on his trade there like any other person. Then if he may do so he has that interest which enables him to gain a settlement by the provision of the legislature: the law of humanity obliges us to afford relief to poor foreigners, to save them from starving." *Lawrence, J.*, in answer to the observation, that the statute of Car. II. did not extend to any but the poor of England and Wales, said, that, "without dispute, Scotchmen and Irishmen may gain settlements here." Both orders quashed. (*Rex v. Eastbourne*, 4 E. 103.)

1. Settlements in general.

A foreigner may gain a settlement by occupying a tenement of 10*l.* for a year.

St. Giles v. St. Margaret's, 1 Sess. Ca. 97. An Englishwoman was married to a foreigner who had no settlement in England: the husband continued for the space of forty days in a parish irremovable, for that there was no place to which he could be removed; and it was urged that the wife continuing with him as part of his family for forty days, in a place whence he hath not a right to be removed, gains a settlement. But Lord Holt, C. J., thought "That where a person stays forty days in a place whence he hath a right *not to be removed*, that gains a settlement; otherwise, where he only stays in a place because they do not know whither to remove him."

A foreigner does not gain a settlement by mere residence of 40 days in a parish.

Ellinor Conred's Case, Comb. 287; 2 Bott, 17. She and her two children landed at Harwich from Holland, and removing to another place, were sent back to Harwich by order of two justices. *Darnel, Serj.* "Landing makes no settlement." Sir Barth. Shower, "Tis within the equity of the act." *Eyres, J. (absente Holt)*, "You must keep them where you have them for aught I know; it seems to me to be *casus omissus*." The order was quashed.

Married women, during their *coverture*, cannot by any act of their own acquire a settlement. What is their proper settlement will be considered in another place.

Married women. (b)

"There never was an instance where a wife was held to acquire a settlement during the life of her husband." Lord Hardwicke, in *Berkhampstead v. St. Mary, North Church*, 2 Bott, 51, "Nor can she by residence of her husband on an estate devised to her, acquire a settlement either for her husband or her children. If she only be irremovable (*R. v. Oakley, post*), and if her husband resides with her he will acquire a settlement; and thereby, indirectly, she will acquire one.

Infants cannot be removed from the parish in which they have a freehold (*Rex v. Hasfield, Burr. S. C.*, 147; 2 Bott, 613); but no case has decided, though it has been intimated in some, that a settlement could not be gained under such circumstances. (*Ib.*) A child under seven years of age, removed with a parent for nurture, will gain no settlement. (*Rex v. Cumnew*, 2 Bott, 36.)

Persons attainted may communicate their settlement to children born after the attainder (*Rex v. St. Mary, Cardigan*, 6 T. R. 116, *post*); and in *Rex v. Haddenham* (15 East, 463, *post*), an attainted felon who had been discharged upon the sign manual, but never received a formal pardon, acquired a settlement by the purchase of an estate.

Attainted persons.

In some former editions of this work it has been said that a deserter can gain no settlement, and *Rex v. Norton* (9 East, 206) is cited as an autho-

Deserters.

(a) This section applies only to leases of dwelling-houses or shops granted to stranger artificers or handicraftsmen. A vintner is not within the statute, 3 Mod. 94; 1 Saunders, 3.

(b) A *feme coverte*, who is the guardian in socage of the children by a former husband, may be irremovable from either estate. See, *post*, *Rex v. Oakley*.

1. *Settlements in general.*

rity. But that case determined only that he could not gain a settlement by hiring and service, on account of the superior claim to his service by the country. But suppose a deserter executed an annual office, or rented a tenement, it seems doubtful whether his desertion from the army would prevent his thereby acquiring a settlement.

In *Rex v. Ashton-under-Lyne*, 4 M. & Sel. 357, the wife had taken the premises, and occupied part of them with her family, long before the husband deserted, and the argument proceeded chiefly upon that ground, leaving it to be inferred that if the husband had himself entered into the contract, and done all the other acts necessary to establish a settlement, the circumstance of his being a deserter at the time would not have defeated it. A soldier may, during his service in the army, gain a settlement by renting a tenement, although he could not by hiring and service. (*Rex v. Brightelmstone*, 1 B. & A. 270; *Rex v. Beaulieu*, post.) It is no objection that his estate was defeasible. (*Rex v. Haddenham*, 15 East, 460.)

II. *Of Settlement by Birth.*II. *Of Settlement by Birth.*

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1. *Of a legitimate child.*

The settlement of a legitimate child is that of the father, or, if any, that of the mother; but until one of these is ascertained, the place of birth is, *primâ facie*, that of settlement.

1. OF A LEGITIMATE CHILD.

Legitimate children take the settlement of their father, or if they have no settlement, they are entitled to the settlement of their mother; and it is only when both these sources fail, that their right accrues to a settlement in the place in which they were born. But until the settlement of the father or of the mother has been ascertained, the settlement of a legitimate child, like that of a bastard, is *primâ facie* in the parish where the birth took place; and if that cannot be ascertained, then the child is not removable from the place where it was found, and must be relieved there as a casual pauper.

A child was removed to the place of its birth, neither father nor mother having a settlement; and on appeal the sessions were of opinion that birth gains no settlement, but only in case of bastardy. *Per Curiam* (*absente Holt*, C. J.) "Birth makes a good settlement, and the labour lies on them where it was born to find another." The order made on appeal was quashed. (*Spitalfields and St. Andrews, Holborn*, Fort. 307; *Rex v. St. Mary, Leicestershire*, 5 Nev. & Man. 215, S. C.)

Cripplegate v. St. Saviour's, 2 Bott, 27. A child of three years of age was removed from one of these parishes to the other; and it appeared in the order that they removed him there because he was born there, not having any other settlement. By the Court: "The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *primâ facie* is the settlement of the child, until there is another settlement found out."

The place of birth is *primâ facie* the place of settlement (*Rex v. Heaton*, 6 T. R. 653); even if the pauper is a widow or a married woman. (See *Rex v. Ryton*, post.) But *per Bayley*, J. "I cannot concur in the argument, that the mere fact of a pauper being first found in a particular parish, is presumptive evidence of his having been born there; and if the cases that have been referred to go that length, I, for one, must be allowed to doubt their authority." (*Rex v. Trowbridge*, 1 M. & R. 12; 7 B. & C. 252.) And in many cases proof of the place of birth will afford but slight evidence of settlement, though of course it may be acted upon if no proof tending to fix the settlement elsewhere be offered. (See *Rex v. Wakefield*, 5 East, 335.)

In *Clavely v. Burton*, 2 Bulst. 351, it was holden by the judges, that if

the mother of a child born in one parish die in another parish, while passing to a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother.

Whitechapel v. Stepney, Carth. 433; 2 *Bott*, 24. It was holden that a legitimate child, where its parent is a vagabond, gains a settlement by birth; but where the settlement of the parent of a legitimate child is known, such child must follow the settlement of the parent.

A travelling woman, having a nurse child, was apprehended for felony, and sent to gaol, and was hanged; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. (*Dalt.* c. 73, p. 168.)

And where a child is first known to be, that parish must provide for it till they find another. (*Comb.* 364, 372.)

Children born in England, but of Irish or Scotch parents, may be sent to Ireland and Scotland under 59 Geo. III. c. 12. (See *post*, and *Rex v. Great Clacton*, 3 B. & Ald. 410; *Rex v. Whitehaven*, 5 B. & Ald. 720; 1 *Dowl. & R.* 384.)

By 13 Geo. II. c. 29, for confirming and enlarging the powers conferred by charter upon the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided by s. 7, that no child, nurse, or servant, received or employed in such hospital shall, by virtue thereof, gain any settlement in the parish where such hospital shall be situate. The settlement of *foundlings*, therefore, is left to be determined by the same rule as prevails in all other cases wherein those particulars as to their birth and parentage can be ascertained, which determine the settlement of the child in such other cases. According, however, to the popular notion of a *foundling*, these facts are not made known, nor are they easy to be discovered. But it is to be inferred that the institution to which the above statute relates, is not limited to the reception of children whose destitution is of that aggravated description. It involves no absurdity, therefore, to say that *foundlings*, if they are legitimate children, follow their father's settlement, if it is known; if not, they take their mother's; and if neither of these be known, or they are bastards, their settlement will be in the place of their birth. But if that also cannot be discovered, they must be provided for in the place in which they may happen to be, as casual poor. The effect of an admission upon this charitable establishment, is only to take those children from the parish where they must otherwise have been supported, and to give them the benefit of the provisions of the hospital. See 54 Geo. III. c. 170, s. 2 and 3, *ante*, 271, 272.

1. Of a Legitimate Child.

The place of birth of a legitimate child as a vagrant, is its settlement, until another be found.

First known place of abode.

Foundlings maintained in hospitals.

2. OF A BASTARD.

2. Of a Bastard.

1. By Birth of a Bastard in general.

An illegitimate child could not *derive* a settlement from either of its parents, and generally speaking was settled in the place where it was born. (*Rex v. St. Nicholas, Leicester*, 2 B. & C. 880; 4 D. & R. 462, *infra*; *Rex v. Astley*, 4 Doug. 391.) But by 4 & 5 Will. IV. c. 76, s. 71, it was enacted "That every child born a bastard after the passing of that act, shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen, or shall acquire a settlement in its own right; and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother: provided always that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female." (See Appendix.)

If the mother of the bastard afterwards marry, then, under the 57th section, her husband is bound to maintain such child till the age of sixteen or the death of the mother; and the liability of the putative father is sus-

Illegitimate child follows the mother's settlement till the age of sixteen.

2. *Of a Bastard.*

The place of birth in general.

pendent whilst the husband is of ability to maintain the child. (*Lang v. Spicer*, 1 Tyr. & Gr. 58; 3 Crom. M. & Ros. 129, S. C.) Before this statute an illegitimate child was settled where he was born.

A settlement by *birth* seems to be founded on the 13 & 14 Car. II. c. 12, by which justices are directed to remove any poor person come to inhabit and likely to become chargeable to the parish where he or she was last legally settled, either as a *native*, householder, &c. for the space of forty days at the least, and therefore it would seem that a residence of forty days is essential to the acquisition of a *birth* settlement. But there is no decision to this effect, and the tacit convention of parishes not to insist upon it would most probably induce the Court of King's Bench to overrule such an objection if it were now attempted to be set up. (See 1 Nol. P. L. 288, n. (1).)

And this is so, whether the parent be a housekeeper or a lodger merely. (*Rex v. Spitalfields*, 1 Lord Raym. 567.) In *Whitechapel v. Stepney* (Carth. 433), it is said that a bastard gains a settlement in its place of birth *ex necessitate*, for being *nullius filius*, it cannot otherwise be provided for, except a reputed father can be found. But this proposition is laid down rather too largely, because if the birth happen in an extra-parochial place, which does not maintain its poor, no settlement is gained, and such child can only be relieved as casual poor till it acquires a settlement in some other way, as appears by

A bastard child, born in an extra-parochial place, which is not a vill, has no settlement.

Rex v. St. Nicholas, Leicester, 2 B. & C. 889; 4 D. & R. 462; 2 D. & R. Mag. Ca. 253. Caroline Littlewood was removed from All Saints, in Derby, to Saint Nicholas, in Leicester. Order confirmed. Case:—The pauper was the illegitimate child of Elizabeth Littlewood, deceased, and was born in May, 1822, in an extra-parochial place, called the Black Friars, in Leicester, which is not a vill, and for which no overseers have ever been appointed. She was shortly afterwards taken by her mother to All Saints, Derby, where she remained until the death of her mother, and up to the time of this order of removal. The mother was legally settled in St. Nicholas, Leicester, at the time of the pauper's birth and of her own death. Per Bayley, J. "The argument in support of the order of sessions is founded upon the assumption that every person is by law entitled to a settlement in some place; but that is by no means the case, *for foreigners have not any settlement in this country*. A settlement attaches to those persons only concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. Generally speaking, an illegitimate child is settled in the parish where it is born. There are some exceptions to this general rule, noticed in the treatises on the poor laws. In most of the excepted cases the mother, at the time of the birth, is in law supposed to be in the place of her settlement, where she ought to be: as where a woman with child is removed out of one parish into another, through the fraud or collusion of its officers, or where the child is born pending an order of removal. In one of these cases the child, when born, is settled in the parish from which the mother has been fraudulently removed; in the other in the parish to which she is ordered to be removed. In this case the child was born in an extra-parochial place. It therefore has not any settlement by birth, and being a bastard, it can derive none from its parent. In such cases however it is entitled to remain with its mother as long as the purposes of nurture require it, and it will afterwards be entitled to relief as *casual poor*, although it has not any settlement. We are all of opinion that the order of sessions must be quashed."

Bastard born in a place by collusion.

If a woman come into a place by privity and collusion of the officers where she belongs, and be there delivered of a bastard, such bastard gains no settlement there, notwithstanding its birth. (*Sett. & Rem.* 66.)

The collusion must be by the parish officers. Where the occupier of land and putative father caused a pregnant woman to remove out of

Rex v. Mattersey, 4 B. & Adol. 211; 1 Nev. & M. 49. William Green Otter was removed from Kettering to Mattersey. Order confirmed. Case:—Elizabeth Otter, the mother of the pauper, lived with William Green, in Mattersey, for eight years, during which time she was delivered of two illegitimate children, of whom William Green was the putative father. The pauper was one of them, and was born at the Lodge-on-the-Wolds, an extra-parochial place. The mother was sent there by W. Green, her master, when

2. Of a Bastard.

she was far advanced in her pregnancy, in order to prevent the pauper from being born in Mattersey. He was proprietor and occupier of considerable land in the parish. He had never, to the knowledge of E. Otter, spoken to the parish officers on the subject of so removing her. She returned to the house and service of W. Green as soon as she was recovered, namely, in six weeks after her confinement, the expenses of which, and also of her maintenance during her stay at the Lodge-on-the-Wolds, were paid by W. Green. *Denman, C. J.* "The general rule is, that an illegitimate child is settled in the parish in which it is born. Unless this case therefore comes within some of the exceptions to that rule, W. G. Otter would be settled in the place of his birth, if it were not extra-parochial, and certainly not in Mattersey. It is said that he is settled in Mattersey, because the mother, when pregnant, was fraudulently removed from that parish by a parishioner liable to pay rates there. But I think it may be collected from *Tewksbury v. Twynning* (a) and *Masters v. Child*, (b) that in order to fix the settlement of an illegitimate child in the parish from which the mother has been fraudulently removed, the fraudulent removal must have been by the parish officers. Here it was not so. No case has gone so far as to show that if the fraud be by an individual, not a parish officer, the child shall be settled in the parish where the fraud was committed." *Parke, J.* concurred. *Taunton, J.* "It does not appear by the statement in the case that the mother of the pauper was settled in Mattersey. It is merely said that she lived there. In *Masters v. Child* it is stated that if a woman being with child of a bastard, and settled in one parish, is persuaded by the parish officers to go into another, and there to be delivered, this fraud will make the parish chargeable where the mother was settled, though the child was not born there. But if the woman accidentally come into a parish, and is persuaded by some of the parishioners to go into another, which she doth, and there is delivered, this shall not charge that parish which persuaded her. That is precisely in point. Here the mother of the pauper was persuaded by one of the parishioners to go to an extra-parochial place. Independently of that decision I should have been bold enough to come to the same conclusion. The general rule is, that an illegitimate child shall be settled in the place where it is born, and the fewer exceptions there are to that rule the better." *Patteson, J.* concurred.

the parish during her confinement to an extra-parochial place, the child will not be settled in the parish from whence she removed.

The fraud must be of the parish officers.

Rex v. Llanfihangel, Abercowin, 4 Nev. & M. 355. An order of removal of Hannah Thomas from Mydrim to Llanfihangel, Abercowin, was confirmed. Case:—*Esther Walters*, single woman, in January, 1833, being pregnant of the pauper, was removed by an order to Llanfihangel, and was, together with the order, delivered to one of the overseers of Llanfihangel; she was left there by the overseer of Mydrim, but on the same day returned to her mother's house in Mydrim, under a promise from the overseer of Llanfihangel, made after the departure of the overseer of Mydrim, that a certificate should in a few days after be given to Mydrim, acknowledging her to be legally settled in Llanfihangel, Abercowin; she was at the same time told by the overseer of Llanfihangel, Abercowin, to go to the parish of Mydrim and look for a place for herself there, until a few days, when she could bring such certificate, and in the mean time to conceal herself from the parishioners of Mydrim. She accordingly returned that day to Mydrim, and concealed herself until the child was born. The overseer of Llanfihangel did not bring the certificate, nor was such certificate ever after given to Mydrim. In about three weeks after her return, E. Walters was, at her mother's in Mydrim, delivered of the pauper, a bastard, she having directed her mother and sister to conceal the fact of her being there, and three weeks after, the parish of Llanfihangel paid the nurse for nursing the pauper. Upon the discontinuance of such payment, the parish of Mydrim, on 14th September, 1833, by the order of the two justices, removed the pauper (who had become chargeable to Mydrim) from Mydrim, where the pauper then was at nurse with her mother, to Llanfihangel. Upon the hearing of this appeal, it was on the behalf of the parish of Llanfihangel objected, that the two justices who re-

The fraud or collusion must be found by the sessions.

(a) 2 Bulst. 349.

(b) 3 Salk. 66.

2. Of a Bastard.

What is not collusion.

Bastard born after the order of removal is made.(a)

Bastard born where the removal of the mother was suspended.

Bastard born in removing.

A bastard born pending an appeal against the order of removal of the mother, which was quashed, is settled in the removing parish.

A bastard born in a parish to which his mother had been removed, which order was quashed, cannot follow his mother's settlement.

So also if the order is quashed for misdirection.

moved the pauper from Mydrim had no jurisdiction to do so, inasmuch as the pauper was under the age of seven years, and at the time with her mother at nurse in Mydrim. Lord Denman. "It is quite clear that we cannot infer fraud; but we think that upon the whole matter stated there is enough to warrant us in sending the case back to the sessions to be re-stated."

In *Masters v. Child* (3 Salk. 66; 2 Bott, 5), and *Tewkesbury v. Twining* (2 Bott, 3,) if a woman with child of a bastard, and settled in one parish, is persuaded to go into another, and there be delivered, this fraud will make the parish chargeable where the mother was settled, though the child were not born there; but if a woman with child of a bastard come accidentally into one parish, and is persuaded by some of the parishioners to go into another parish, which she doth, and there be delivered, this shall not charge that parish which persuaded her. (*Rex v. Astley*, 4 Doug. 389.)

2. Also if a bastard be born after an order of removal has been made, and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. (*Reg. v. Ickleford*, 1 Sess. Cas. 33; *Sett. and Rem.* 66; 2 Bott, 9.)

3. By 35 Geo. III. c. 101, the removal of persons during sickness may be suspended; and by s. 6, if during such suspension any unmarried woman shall be delivered of a bastard child, every such bastard shall be deemed and taken to be settled in the parish, township, or place in which was the legal settlement of such mother at the time of her delivery. Provided that all acts heretofore made touching bastard children, or concerning the mothers or reputed fathers of such children, shall remain in full force, as well in cases where by this act the settlement of such child is directed to be the same as that of the mother, as where the settlement remains as it did before the passing of this act.

4. If the officers be carrying a woman, by virtue of an order of removal, to another parish, and she be delivered on the way thither *in transitu*, the bastard shall go with the mother where she is going by virtue of the order, notwithstanding the birth. (*Jane Gray's case*, *Sett. & Rem.* 66; 2 Bott, 8.)

5. *Rex v. Great Salkeld*, 6 M. & Sel. 408. Order of removal of Lancelot Walker, otherwise Nicholson, from Morland to Great Salkeld, confirmed. Case:—The mother of the pauper, Catherine Nicholson, whilst a single woman and pregnant with the pauper, was removed from Great Salkeld to Lowther, and the order was confirmed on appeal, but on a case stated was quashed by K. B. Whilst the appeal was depending, and before the decision of the court, Catherine was delivered of the pauper in Lowther, born a bastard. Lord Ellenborough, "The birth settlement of the pauper, though in fact born at Lowther, was in Great Salkeld, for there he was in judgment of law born, because the order of removal being vacated, the mother's right to be in Lowther was void *ab initio*." Abbott, J. "An illegitimate child is, as it cannot derive a settlement from its parents, in the first instance settled where born; but where the mother is improperly removed, the law says that the parish whence the removal was made, and where, but for this, the child would have been born, is to be considered the place of its birth." Order confirmed.

Rex v. Martlesham, 5 Man. & R. 82; 10 B. & C. 77. Order of removal of Athrol from Playford to Martlesham confirmed. Case:—Sarah Athrol, single woman, being pregnant, was removed by an order from Playford to Stutton. Before the sessions she was delivered at Stutton of the pauper, a bastard. At the sessions, Stutton appealed, and the order was quashed. At the time of the bastard's birth the mother belonged to Martlesham. Bayley, J. "It is quite clear that a bastard cannot gain a settlement by parentage: the pauper therefore was not settled in Martlesham, and the order of sessions must be quashed."

Rex v. St. Andrew Holborn, 6 M. & Sel. 411. Order of removal of Mary Aldridge and child from Painswick to St. Andrew Holborn, confirmed. Case:—

(a) Here the act of God prevents the execution of the order. Lord Tenterden, in *Rex v. Halifax*, post, 279.

The divisions of St. Andrew Holborn, Saffron Hill, Middlesex, and St. Andrew Holborn, London, although divisions of the same parish, are separate districts as far as the maintenance of the poor is concerned. Pending an appeal upon an order removing the pauper as a single woman with child from Painswick to St. Andrew Holborn, London, she was delivered of a child in the latter district. The judgment on appeal was against Painswick, for misdirection of the order of removal. Another, the present, order was then obtained to St. Andrew Holborn, Saffron Hill, the admitted settlement of the mother. *Per curiam*, "The statute has no regard to orders of removal improperly made, so as to give them a kind of floating existence until the blunder is cured by a fresh order. The order in question being to a wrong district, is the same as if it had been directed to the wrong parish." Order quashed as to the child.

35 Geo. 3, c. 101.

The same principle had previously been acted upon in *Much Waltham v. Peram*, 2 Salk. 474, and also in *Westbury v. Coston*, 2 Salk. 532; 1 Salk. 121; in which it was held, that if a woman, pregnant, be removed by an order, and she be delivered, and there be an appeal, and the order be reversed, the child must be sent back; and *Holt, C. J.* said "Though there be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: fraud or not fraud is not material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it."

Rex v. Halifax, 2 B. & Adol. 211. An order of removal of Ann Smith and Thomas her child, was confirmed as to Ann, and quashed as to the child. Case:—Ann Smith, who was settled in Manchester, lived at Halifax in January, 1829, and was then pregnant of a child likely to be born a bastard. On the 30th of January, by an order of two justices, made before but executed after the Epiphany quarter sessions, she was removed to Manchester, and delivered to the overseers of the poor there. They requested her to go into the workhouse, but she refused, and on the next day (January 31st) returned to Halifax, where she remained till the 20th of February following, and was on that day delivered of a bastard, the child mentioned in the order. The Easter sessions for the riding in which Halifax is situate were holden on the 27th of April, and by the practice of those sessions, when an order of removal is appealed against, there must be ten days' notice previous to the sessions, but no notice of appeal was given against this order, nor was any appeal entered against it at the Easter sessions. The return of Ann Smith from Manchester to Halifax was without the knowledge of the appellants or respondents, and no fraud was imputable to either. The point made for the respondents was, that as the pauper Ann Smith had been removed after the Epiphany sessions, and had returned of her own accord and without any notice into the respondent township, and had been there delivered of a bastard child, whose settlement was in question, without the knowledge of the respondents, before the time of giving notice of appeal for the next sessions had expired, the order must be considered as pending, and the settlement of the child must follow that of the mother. Lord *Tenterden, C. J.* "I am of opinion that the order of sessions was right." *Littledale, J.* "It seems to me that in this case the child was settled in the place of its birth according to the general rule on the subject of bastards. There is an exception to that rule where the child is born while the order is under execution, and before it can be completely fulfilled, the interruption happening by the act of God, and the officers having done all in their power to carry the order into effect, as where the birth takes place on the road or during detention by floods. But here the order had been executed, and the woman afterwards returned from the appellant to the respondent township, without any fraud on the part of either. It is admitted, that if the child had been born after the time for appealing had expired, the settlement would have been good; and I think it is the same in this case, as there was no appeal depending at the time of the birth. *Landinaboe v. Much Birch* seems an authority to the contrary, but the reporter himself questions that case, and admits that it was not well considered." *Parke, J.* "The order in this case had been executed, and the

If after an order executed, the woman returns to the removing parish without the knowledge of the overseers, the child is settled where born.

2. *Of a Bastard.*

parish officers of Manchester had received the pauper, and after that she returned to Halifax, and was there delivered. The parties stand on just the same footing as if this had happened after the order had been appealed against and confirmed at sessions. An order can no more be said to be pending during the time in which an appeal may be instituted, than a judgment while a writ of error may be brought. Here was a complete execution of the order; no fraud appears in the appellants, and the overseers of Manchester had no power to detain the pauper there. The order of sessions must therefore be confirmed." *Patteson, J.* "The order had been completely executed, and was not depending. Although the pauper became a vagrant by returning to Halifax, that can make no difference in the question between these parishes." Order of sessions confirmed.

Bastard born in the house of correction.

6. A child born in the house of correction shall be sent to the parish from which the mother was sent to the house of correction, this being the place where she was last settled. (*Suckley v. Whitborn*, 2 *Bulst.* 358.)

In prison

And in *Elsing and the county gaol of Hereford*, 1 *Sess. Ca.* 94; 1 *Nol. P. L.* 290, a bastard was born in the county gaol: Resolved, that the settlement was with the mother. (*Rex v. Astley*, 4 *Doug.* 391.) See 54 *Geo. III.* c. 170, s. 2, (*ante*, 271.)

In the house of industry of an incorporated district.

7. By 20 *Geo. III.* c. 36, all bastard children born in the house of industry, of any hundred, or other district, incorporated by act of parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

8. Although the 10 *Geo. IV.* c. 56, for consolidating the laws relating to friendly societies, repeals the following enactment, and makes no similar provision, yet as cases may arise upon the law as it stood prior to the repeal, it has been thought best to retain it.

Bastard born under the act for establishing friendly societies.

By 33 *Geo. III.* c. 54, s. 25, for the encouragement and relief of friendly societies, every child which shall be born a bastard in any parish or place, the mother whereof shall at the time of the birth of such child be a member of any such benefit society, and be residing in such parish or place under the authority of that act; such child shall have the same settlement which the mother had at the birth of such child; any usage or custom to the contrary notwithstanding. Vide Vol. II. title, "*Friendly Societies.*"

If she is residing with her father, as a member of her family, and he has a certificate under this act; she is residing under the authority of the act, and her bastard will follow her settlement.

Rex v. Idle, 2 *B. & Ald.* 149. Order of removal of M. W. and her bastard child from Idle to Rawden: confirmed by the sessions as to the mother, but discharged as to the child. Case: For several years prior to the 4th October, 1817, J. W., father of M. W. was an efficient member of a friendly society, established in pursuance of the 33 *Geo. III.*, "*An act for the encouragement and relief of friendly societies.*" On the 4th October, 1817, a certificate as to that fact was duly made and verified. [The case then set out the certificate, which was regular.] This certificate and the verification were, on the 7th October, 1817, delivered to the overseers of Idle. The bastard child was born in that township on the 19th November, 1817, whilst J. W. and his family (of which M. W. was then a member) were residing there under the supposed authority of the certificate and the acts relating to friendly societies. *Abbott, C. J.* "I am of opinion that the original order of the two magistrates was good, and that the sessions were mistaken in their judgment. It has been argued that the friendly society act was repealed by the 35 *Geo. III.* c. 101, which provides that no person shall be removeable from any parish until actually chargeable, and thus, it is said, rendered wholly unnecessary the former protection by certificate under the friendly society act. But I think that it is not so; for it may be very convenient, notwithstanding the effect of the 35 *Geo. III.* to keep the provisions of the 33 *Geo. III.* in force. In many cases, a labourer who might wish to come into a parish might not be able to obtain employment there, for fear that by so doing he might bring burthens upon the parish. But if he came with a certificate from a friendly society, that fear would be removed. It would, therefore, be depriving the members of such societies of a material benefit, if we were to hold the 35 *Geo. III.* to be a virtual repeal of the provisions of the 33 *Geo. III.* Then

the question arises, who are the persons protected by the latter act? The object of the act being to facilitate the finding of employment, it should receive a liberal construction. I think therefore that the certificate granted to the head of the family protected not only him, but also all the members of the family, and placed them in the same situation in which he stood. If so, then they would not be removable till they became actually chargeable. According to *Rex v. Great Yarmouth* (8 T. R. 68), this woman, under the circumstances stated to us, was removable; but although that was so, still it may be very questionable, whether, in this particular case, the parish officers were bound to remove the mother? There is an obvious distinction between the effect of a certificate under the 33 Geo. III. and that of one under 8 & 9 W. III. For the former of these two statutes enacts, "that every child born a bastard in a parish during the mother's residence therein, under the authority of that act, shall have the same settlement as the mother." The attention, therefore, of the parish officers, would naturally not be called to the situation of a woman residing under a certificate granted under 33 Geo. III.: and I think, therefore, that they were justified in not removing in this case. No inconvenience can arise to the other parish from this; for if the mother had been actually removed, the child would have been born in their parish, and so would have been settled there. They, therefore, are placed in no worse situation by our holding that the child shall follow the mother's settlement, though she was not removed. I think, therefore, that the parish officers were not bound in this case to remove the mother, and that the child being born in Idle, whilst the mother was residing there under the authority of the 33 Geo. III. c. 54, followed her settlement in Rawden, and that the order of sessions was therefore wrong." *Bayley and Holroyd, Js.* gave similar judgments.

9. By 13 Geo. III. c. 12, s. 5, a bastard born in a lying-in hospital, shall follow the mother's settlement. It may be observed that no such hospital can be established without licence from the justices in sessions. See 54 Geo. III. c. 170, s. 2, *ante*, 271.

Bastard born in a lying-in hospital.

Rex v. Manchester, 4 B. & Ald. 504. M. the wife of J. C. and her two children, E. aged eight years, and J. aged six weeks, were removed from Manchester to St. Andrew's, Canterbury. Upon appeal, the order was confirmed as to the wife and E., her daughter, and quashed as far as it respected J. Case:—In the Manchester workhouse there is a room, for which a licence has been obtained, for the reception of lying-in women. This room has been duly licensed pursuant to the 13 Geo. III. c. 82. The room is appropriated by the officers of the town of Manchester to the reception of women resident within the township, but settled elsewhere, and pregnant with children likely to be born bastards, and also to the reception of pregnant women chargeable to the township, and settled in Manchester; and in some few instances, pregnant women have been received from other districts, upon a compensation paid by the overseers of the place in which such pregnant women were resident. Women having settlements elsewhere than in Manchester, if too far advanced to be safely removed to their settlements, are placed by the town's officers in this room for the purpose of being delivered. The expences incurred in respect of the room are defrayed in common with the general expences of the workhouse out of the parish rates. M. C. being settled in St. Andrew's, Canterbury, but resident in Manchester, and pregnant with a child likely to be born a bastard, was placed by the officers of Manchester in this room, and was there delivered of the pauper J. who was born a bastard. The question was, whether this room is a hospital, or place within the act referred to, and whether by the force of that act, the settlement of J. is in St. Andrew's, or whether it is in Manchester. *Abbott, C. J.* "It seems to me that in this case we cannot consider this a hospital or place within the act. By the 10th section, the person having the management of it is directed, before the admission of any pregnant woman into such hospital, to take her before a justice to be examined whether she be married or single; and other duties are cast upon them for that purpose. By the 4th section, an inscription is to be placed over the door or public

A room in a parish workhouse, licensed pursuant to 13 Geo. 3, c. 82, and appropriated to the reception of, and used for the purpose of, delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expence of which room was defrayed in common with the general expences of the workhouse out of the parish rates, is not an hospital or place within the 13 Geo. 3, c. 82, s. 3.

2. *Of a Bastard.*

Bastard of lunatic born in county lunatic asylum.

entrance of every such hospital, stating that it is licensed for the public reception of pregnant women, and supported by charitable contributions. In the present case, it is only a room set apart for this purpose in the workhouse, the expences of which are defrayed out of the poor's rate. I think, therefore, that this cannot be said to be used for the public reception of pregnant women, nor supported by charitable contributions. Manchester, therefore, is not protected by the 5th section; and the sessions have come to a right conclusion." Order of sessions confirmed.

10. By 9 Geo. IV. c. 40, s. 49, no bastard child which shall be born of any insane person, in any such county lunatic asylum, shall thereby gain a settlement in the parish in which such asylum shall be situated; but that the place of the legal settlement of any such child so born as aforesaid shall be in the parish where the mother of such child was last legally settled. See tit. "Lunatic," Vol. III.

The 51 Geo. III. c. 79, was repealed by the 9 Geo. IV. c. 40. The latter act applies only to county asylums; the former act was general.

Vagrant's child.

11. By 17 Geo. II. c. 5, s. 25, if a *vagrant* woman were delivered of a bastard, the overseers might take her before a justice, and then the settlement of the child would follow that of the mother. By 3 Geo. IV. c. 40, s. 41, (24th of June, 1822), the bastard child of any vagrant woman followed her mother's settlement. But these acts are repealed by the 5 Geo. IV. c. 83, (21st of June, 1824), and no similar provision re-enacted. As to legitimate children of vagrants see *Coxwell v. Shellingford*, *post*, and see 4 *Dougl.* 391.

12. Bastards born in the workhouse of a Union will follow the mother's settlement till the age of sixteen (*ante*, 275.) but after that period, it seems that the child will be settled in the parish to which it was chargeable, and not to the parish in which the workhouse may be situate. See 4 & 5 W. 4, c. 76, s. 20 & 21, appendix.

By 22 Geo. III. c. 83, s. 39, an illegitimate child born in any workhouse established under that act would follow the settlement of the mother.

2. *How Settlement of a Bastard affected by a Certificate.*

The nature and general effect of *certificates*, given by parishes to enable their poor to reside in other parishes where they can best earn a subsistence, is explained under the head, "*Acknowledgment of Settlement by Certificate.*" But the settlement of a *bastard* in the place where he is actually born, may be affected by the mother being certificated at the time.

The general rule is, that bastards born in a place in which the mother resides under a certificate, are settled where born. But a bastard of which the mother is pregnant at the time the certificate is given, *may* be included in the certificate, but is not comprehended under the term "family."

Bastard born under certificate is settled where born.

Windsor v. White Waltham, 1 *Stra.* 186. John P. being settled in Waltham, where he had lived two years with a woman his reputed wife, went with a certificate, owning them as man and wife, from thence to Windsor, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled in Windsor where they were born. And by the Court: "There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent." (a)

A bastard is not included in the word "family" in the certificate acts, and, therefore, is settled where born.

In *Hilton v. Lidlinch*, 2 *Stra.* 1168; *Burr. S. C.* 187; 2 *Bott*, 13; a single woman went into *Lidlinch* with a certificate from *Hilton*, where she lived a year, and then had a bastard child. The only question was, whether the child should be settled in the parish where it was born, or in the parish which gave the certificate? By the court:—"The certificate must be taken

(a) In the above case the decision conclusive that the man and woman turned chiefly upon the certificate's being were acknowledged. See case *post*.

to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish before she was delivered of the child; and wherever this Court in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended upon some point of fraud or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is: for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands entirely on 8 & 9 Will. III. c. 30, which, for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish till they become actually chargeable; and then such person is to be removed, together with his or her *family*, and in another place, with his or her *children*, to the place from whence the certificate was brought. The question, then, is, whether the bastard is included under the words *family* or *children*? And we take it he is not; for the law takes no notice of bastard children; they are *filii nullius, filii populi*, and are *prima facie* settled where born."

Rex v. Wyke, Burr. S. C. 264; 2 Bott, 14. John Catton, a bastard, was removed from Wyke to Hipperholm, the place of his birth. Order quashed. Case:—S. Catton, mother of the pauper, came on the 25th of March by certificate from Shelfe to Hipperholm, being then pregnant with the pauper, and was in April following delivered of him at Hipperholm. The certificate undertook that Shelfe should provide for her *and her child* whenever they should become chargeable, and it was insisted, that the certificate expressly undertakes to provide for her *and her child*, and had this very child in contemplation, no other child being hinted at. Lord C. J. Lee and Mr. J. Wright agreed that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. J. Foster observed, (to which observation the other two justices agreed,) that it did not at all appear that the parish who gave the certificate *knew* that the woman was then with child.

Although the certificate undertake to provide for a woman *and her child*, she being then pregnant of a bastard.

Rex v. Ipsley, Burr. S. C. 650; 2 Bott, 15. Anne Causier came into Ipsley with a certificate from Studley, acknowledging Anne Causier, spinster, *and the child or children* that she *now* goeth with, (a) to be legally settled in Studley: and if at any time Anne, or her child or children which she *now* goeth with shall become chargeable to Ipsley, Studley thereby promised, when requested, to receive and provide for them as their inhabitants. The child was born at Ipsley, within about a month after she came to reside there under the certificate. The court were clearly of opinion that Studley was bound by this certificate, which takes notice of the woman's being then unmarried and with child, and acknowledges the child she then went with to be legally settled with them in their parish. And Lord Mansfield, C. J. observed, "that the woman was very big with child; and was understood by both parishes to be so: and Studley expressly promised to provide for the infant she then went with. Therefore they ought to be bound by their certificate. An infant *in ventre sa mere* may be, to a variety of purposes, considered as born."

A certificate including the child with which a woman whom they state to be unmarried is at the time pregnant, is settled in the mother's parish, though born in the certificated parish.

Rex v. Mathon, 7 T. R. 362. R. Cagear was removed from Cradley to Mathon. Order confirmed. Case:—Margaret Cagear, a single woman settled at Mathon, and pregnant of an illegitimate child that was afterwards born a bastard, went to Cradley in 1738, under a certificate from Mathon, wherein Mathon "engaged to relieve and receive Margaret Cagear with *the child of which she was then pregnant*, and all other children that she might thereafter have, until she or they should acquire a subsequent settlement, whenever she or any of them should become chargeable." She resided in Cradley under that certificate until her death; and in 1746 had the present pauper, an illegitimate child, who continued to reside in Cradley until removed by the present order, without having done any act to gain a settlement for himself. *Rex v. Ipsley* was cited, and it was urged that there was

But certificate engaging to relieve a woman and her child, with which she was pregnant, and all other children which she may have, will not include bastards born eight years afterwards.

(a) This distinguishes this case from the prior one of *Rex v. Wyke*.

2. *Of a Bastard.*

the same reason to extend the present certificate to this pauper; the certificate mentioning the mother's situation, and extending to all after-born children. Lord *Kenyon*, C. J. "It is not now necessary to question the propriety of *Rex v. Ipsley*. That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case: that only extended to the child with which the woman was then pregnant, and a child in *ventre sa mere* is capable of being described. But this child was not born until eight years after the certificate was granted, and being illegitimate, he is not included in the general words in the certificate, which extends only to legitimate children." Order of sessions quashed. [It does not appear that the woman was stated to be unmarried in the certificate; but the case called her "single woman."]

3. *When removeable from Mother.*

Bastard not to be removed whilst a nurse child.

It will have appeared from the above cases, that the settlement of the mother will frequently be in a different parish from that in which her child is settled, and as both may stand in need of parochial relief, the burthen will have to be divided between the two parishes. The many objections to the separation of the child from the mother, in the earlier period of infancy, need not be described; they are sufficiently obvious, and have yielded to the humane maxim of the law, that children shall go with the mother for nurture until the age of seven years, and during that time be inseparable from her. Thus, in *Cripplegate v. St. Saviour's* (*post*, Fol. 265; 2 *Bott*, 27), it was agreed by the whole court, that the age of a nurse-child, so as not to be separated from its mother, is until seven years of age. *Skeffreth v. Walford*, 2 *Sess. Ca.* 90; 2 *Bott*, 11. The order was to remove a woman to her settlement; and her child of two years of age to a different parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse-child, they could not separate it from the mother, on account of the care necessary to nurture so young a child, which none can be supposed so fit to administer as its mother; and therefore it should have been sent with her to the place of her settlement. And the orders were quashed by the court.

Except when deserted by the mother.

But the reason upon which this rule is founded does not apply if the mother voluntarily desert her child, and in that case it may be sent to its place of settlement.

To be maintained whilst a nurse-child by its own parish.

And although where the child continues with its mother as a nurse-child, and during that time is not removeable to its place of settlement, yet the parish where the child's proper settlement is, shall maintain the child in the parish where it resides with the mother. See *Rex v. Henlington*, *post*, and the form of an order for relief, *Appendix*.

Evidence of Settlement by Birth.

3. EVIDENCE OF SETTLEMENT BY BIRTH. (a)

The place of birth is *prima facie* the place of settlement, as well of legitimate as of illegitimate children. (See *ante*, 274, 275.) But, to establish a conclusive settlement by birth it must be made to appear either that the child is illegitimate, or, if legitimate, that *neither* of its parents had obtained a settlement at any time before the question arises. (*Id. ibid.*) To this must be added, proof of the place in which the birth happened.

The ordinary cases of illegitimacy arise from the circumstance of the mother being single down to the time that the child is born; but the child of a married woman may be a bastard, in which case it also takes a birth settlement. (See *ante*, 275.)

But what is termed a birth settlement is the weakest species of settlement, and exists only when no other settlement can be ascertained, and it may be answered by proof of the maiden settlement of the mother, without showing

(a) See division, *post*, title, "Evidence." "Settlement by Birth," *ante*, 274.

that the father had no settlement. (*Rex v. St. Mary, Leicester*, 5 Nev. & Man. 215.)

After proof of the marriage, a child is presumed to be legitimate, though the contrary may be proved. The presumption will still be in favour of legitimacy, though the parents were separated by voluntary deed; but the presumption is the other way, if they are separated by a divorce *a mensâ et thoro*; and the child is, of course, a bastard, if begotten and born after a divorce *a vinculo matrimonii*.

Either of the parents may be examined as to the legitimacy or illegitimacy of their children. The treatment of a child by a parent in his family as illegitimate would be good evidence. And declarations of parents in their lifetime, that the child was born before marriage, are admissible in evidence. (*Rex v. Bramley*, 6 T. R. 330.)

The parents may prove the *time* of birth; and after their death, their declarations, made in their lifetime, are evidence of that fact: but the register is only evidence of the christening; and *non constat* thence, when the child was born. Per Lord Mansfield, C. J. (*Goodright v. Moss*, Cowp. 591.)

The locality of the birth may be proved by some person who saw the mother in the parish just before and immediately after that event, and who also saw the offspring, and can give evidence of identity. The party himself can have no recollection of the place of his birth, and the fact of his remembering himself when he was four years of age, in the parish of A., is no proof that he was born there. (*Rex v. Trowbridge*, 1 Man. & R. 7; 7 B. & C. 252.)

In *Rex v. Erith*, 8 East, 539. It appeared on the evidence of the pauper, that he remembered being at Erith with his father; that they had no fixed residence; and that his father, who was now dead, had told him that he was born a bastard at Erith, and had pointed to that place as they were passing, telling him that that was the place of his (the pauper's) birth. A search was made in the books of the parish of E., and no register of the pauper's baptism was to be found there. The sessions thought this sufficient evidence of the pauper's birth at E. Lord Ellenborough, "The controversy was not, as in a case of pedigree, from *what parents* the child derived its birth, but in *what place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but that of locality, and therefore not governed by the rules applicable to places of pedigree; and is to be proved therefore as other facts generally are proved, according to the ordinary course of the common law; that is, by evidence to which the objection of *hearsay* does not apply. We are, therefore, upon this ground, of opinion that the evidence of the father's declaration as to the birth-place of the pauper, the bastard, ought not to have been received." Order of sessions quashed, (*post*, "*Hearsay Evidence*." See *Phill. Ev.* 229, 6th edit.; 3 Stark. on Evid. 1115.)

The declaration of a deceased mother as to the *time* of birth is admissible in evidence, upon a question as to the *place* of birth of the child, though the father be living. (*Rex v. Birmingham*; *Rex v. Aston*, K. B., Oct. 1829; *Steer's Par. L.* 599. See *post*, "*Hearsay Evidence*."

Rex v. North Petherton, 5 B. & C. 508; 8 D. & R. 325; 4 D. & R. Mag. Ca. 79. Joseph Rich was removed from North Petherton to West Monckton. Order quashed. Case:—To make out the settlement of the pauper's father, it was proved by a copy of the parish register of Spaxton, that he was baptized in that parish. There was no other evidence of his having been born in that parish, and the sessions thought, on the authority of *Creech St. Michael v. Pitminster*, that they were bound to consider the register by itself, *prima facie* proof of the place of his birth. When that case was quoted in King's Bench, Bayley, J. said, "We do not know at what age the pauper's father was baptized. It was urged that he was baptized within a very short time after his birth. According to the doctrine of the church touching baptism, 'the pastors and curates are directed to admonish the people, that they defer not the baptism of infants any longer than the Sunday next after the child be born, unless upon great and reasonable cause declared by the curate and by him approved.'" *Gibson's Codex. Jur. Ecc. Bap. tit.*

3. Evidence of Settlement by Birth.

Presumptions as to legitimacy.

Parents may be examined as to the legitimacy of their children.

Time of birth may be proved by parents.

Place of birth, how proved.

Hearsay declaration of the father, as to the *place* of his son's birth, is not evidence.

The register of baptism is not *alone* sufficient evidence of the place of a person's birth.

3. Evidence of Settlement by Birth.

18, c. 9. *Bayley, J.* "The register of baptism *per se* is not evidence of the place of birth. If the age of the child at the time when it was baptized could be ascertained, the register might in some cases be evidence of the place of birth. If the child were then very young, the register would be presumptive evidence that it was born in that parish where it was baptized; but if the child were not then young, the circumstance of its having been baptized in a particular parish would afford no presumption that it was born there. Here there was no evidence to show the age of the child when it was baptized. We think, therefore, that the case must go back to the sessions to be reheard, in order that they may ascertain by other evidence whether the father of the pauper was born in the parish of Spaxton or not. We do not say that a register of baptism is not evidence of the place of birth, when accompanied with proof of other circumstances, but that, taken by itself, it is not evidence of the place of birth." *Holroyd, J.* "I am of the same opinion. I think the register alone is not sufficient to establish the place of birth. It would be sufficient, coupled with proof that the pauper's parents were living within the same parish at the time of the baptism, or that the birth had been shortly previous to the baptism, which latter circumstance would afford a strong presumption that the child was born in the same parish where it was baptized." *Littledale, J.* concurred.

Birth settlement may be proved by the copy of the parish register of christenings, and by identifying the person.

Creech St. Michael v. Pitminster, Burr. S. C. 765; 2 Bott, 28. A copy of the parish register of Pitminster was produced. "Christenings, 1735, John, son of John Every and Mary his wife, baptized Dec. 5." And one of the witnesses swore that the pauper lived many years ago with him; that John Every, who lived in Pitminster, and died long since, was considered as the pauper's father; and that he knew Mary Every, who lives in Pitminster, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. Lord *Mansfield, C. J.* seemed to think, and so it was afterwards determined, that this evidence was sufficient.

Illegitimate children.

Evidence of bastardy after the mother's death, by the father, who contradicted his own assertions made during the mother's life, that he had been married.

St. Peter's v. Old Swinford, Burr. S. C. 25. The son of J. H. was removed from St. Peter's to Old Swinford, as a bastard, born there of Hannah Ashe. Order quashed. Case:—J. H., the father, proved that for seven years together he travelled with H. A., as wandering persons, till the death of H. A., about fifteen weeks since; during that time they cohabited as man and wife, and it did not appear that the marriage was ever questioned in the lifetime of H. A. During the time she was delivered of three children, one of whom, the pauper, was born in O. S. They were reputed to be his children, and the pauper was baptized as the legitimate child of him and H. A. He and H. A. were never married. The sessions were of opinion that the evidence of J. H. was not admissible to bastardize the pauper. Lord *Hardwicke, C. J.* "There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. The evidence of the man is admissible to prove this fact. The child is therefore a bastard, and must be settled where born."

Parents may prove that they were never married.

In *Rex v. Bramley, 6 T. R. 330*, the sessions refused to receive the mother as a witness, to prove that she never had been married, or had been illegally married; and also the declarations of the father and mother to that effect, they having cohabited together, and been reputed as man and wife till the death of the father. But Lord *Kenyon, C. J.* held that this evidence was certainly admissible: that parents may be called to prove the children illegitimate. But he observed that such evidence was open to very great observation.

It had been doubted whether, after thirty years cohabitation as man and wife, the husband shall be permitted to deny his marriage.

Rex v. Stockland, Burr. S. C. 508; 2 Bott, 91. Case:—John Moes and Elizabeth Mason, father and mother of the pauper, being both resident in Chardland, about 1723, went from thence together, declaring they were going to be married, and soon returned, declaring they had been married; and from thenceforward cohabited as man and wife for about thirty years, until the death of Elizabeth. The pauper was born at Chardland in 1725, and there baptized, and his baptism registered as the son of John and Elizabeth Moes. John and Elizabeth Moes, some years before the death of Elizabeth,

removed from Chardland to Stockland, and there acquired a settlement. They carried with them the pauper, whose settlement depended upon this question, viz. "whether John and Elizabeth were to be considered as husband and wife at the time of his birth?" It was contended at the sessions that they were never married; or, if they were, that Elizabeth had a former husband then living. Concerning which, several witnesses having been examined on both sides, John Moes, the father, was produced, in order to prove that he and Elizabeth were never married, and that the supposed other husband was then living. But the court refused to receive his testimony, and were of opinion that the marriage of John and Elizabeth was proved, and that the pauper gained a settlement at Stockland. Lord Mansfield, C. J. seemed to think that thirty years cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon. However, a rule was made to show cause; but on the last day of term the objection was given up, and, by consent, the order of sessions was affirmed.

Rex v. Luffe, 8 East, 193. An order of bastardy was made, adjudging M. Taylor to be the mother of a bastard child: and the order stated her to be the wife of J. T., and that it appeared *as well on the oath of the said M. T., as otherwise*, that her husband had been beyond the seas, and that she did not see her said husband, or *had access to him*, from, &c. &c., and that her husband returned only fourteen days before the birth, and adjudging *as well on the oath of the said M. T. as otherwise*, the said H. L. to be the reputed father of the said bastard child. One point was, that the wife was admitted to prove non-access, which, it was contended, ought not to have been. Lord Ellenborough, C. J. "The wife might prove the fact of her connection with that person whom she charged as being the real father of the child. And the whole of the judgment of the C. J. and the other judges went upon the supposition that she was not a witness to the fact of non-access, but only to the fact of criminal connection; and that the words '*as otherwise*' implied that other persons were examined on oath. The second point discussed in the case is not material in this place. The third point was, that the non-access of the husband ought to have been proved during the *whole time* of pregnancy." In answer to this, it was said by the court, that natural impossibility, the being within the age of puberty, and great infirmity, would bastardize the issue though the husband had access. And that it was always a matter of evidence, whether the husband could, by possibility, be the father of the child. But they left in full force the rule of law, that marriage before the birth made the after-born child, the conception of which commenced before marriage, the legitimate child of the parties marrying. (See tit. "**Bastard**," Vol. I.)

3. Evidence of Settlement by Birth.

The wife may prove the fact of connection with the person she charges as the father of the child.

In *Rex v. Kea*, 11 East, 132, the sessions received the evidence of a person who had been the wife of the father (since deceased) of the pauper, and was now the wife of another, to prove that her first husband had not had access to her during a certain period, viz. at the time of the conception of the pauper, and for many months before. Lord Ellenborough, C. J. said, "that to hold this evidence receivable, would be to overthrow *Rex v. Reading*, which were not meant to be overruled in *Rex v. Luffe*; the court intending in that case that the wife had only been examined to the facts she might legally prove, and not to the non-access of the husband. And the court also said that the death of the husband made no difference. Where the husband is within the realm, it is not incumbent on the party alleging bastardy to prove that the husband could not, by any possibility, have had access to the wife; it is sufficient to adduce such circumstantial evidence as satisfies the minds of the jury. The removal of the husband to a place distant from the wife, her cohabiting with another man, and the fact that the son, whose legitimacy is questioned, took the name of the latter from his birth, and which he and his descendants afterwards retained, is strong evidence of illegitimacy.

But not the non-access of the husband.

Goodright v. Saul, 4 T. R. 356. A parish may also be estopped by a certificate acknowledging the bastard to be settled with them. (See *ante*, 282, 3, 4.)

3. *Of Settlement by Parentage.*III. *Of Settlement by Parentage.*

1. *Derived from the Father*, 288.
2. *Derived from the Mother*, 290.
3. *Of Emancipation*, 292.

1. *Derived from the Father.*

Legitimate children derive their settlement from their parents.

I. DERIVED FROM THE FATHER.

Settlement by parentage, and settlement by marriage, form the two species of what are called *derivative settlements*, and it was only legitimate children who could acquire a settlement by parentage; for a bastard, according to *Holt*, C. J., has no father, or rather none that the law looks upon as such, and consequently can derive no settlement from the relation of child and parent. (*Hard's Case*, 2 Salk. 427.)

And now 4 & 5 Will. IV. c. 76, s. 57, enacts, "That every man who from and after the passing of this act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children; and such child or children shall, for the purposes of this act, be deemed a part of such husband's family accordingly." It has been considered by the poor law commissioners that that introduced a material alteration. As the law formerly stood, the settlement of a second husband was not communicated to the family of the wife by a former husband; but under the new act it is otherwise, during the continuance of the marriage, as will appear by the following communication from the poor law commissioners, which has been received by the several magistrates:—"The commissioners desire to state to you their opinion that the settlement of the second husband is communicated, during the continuance of the marriage, to the family of the first, until one of the contingencies pointed out by the 57th section of the Poor Law Amendment Act occurs, viz. 'until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children.' In either of these cases occurring, it is the opinion of the commissioners that such children revert to their former, that is, their father's settlement, which has been suspended whilst they formed a part of the second husband's family."

It seems to have been erroneously thought at one time, that if a legitimate child were born whilst the parents were in a state of vagrancy, or in a parish different from that in which the parents were settled, or was born an idiot, that it was settled where born. (*Ib.*; *Coxwell v. Shillingsford*, Fost. 313; Fol. 269.)

But the rule is, that a legitimate child is only entitled to a settlement where it is born, in case the parents have no settlement, or none that is known in this country. This applies to foreigners who come into England and have children here—they themselves having acquired no settlement. But in the case of children of Irish and Scotch parents, and forming part of the family of such parents, they are not to be relieved in the place of their birth if their parents become chargeable, but must be removed with their parents to Ireland or Scotland, under 59 Geo. III. c. 12, s. 33.

If a father whose settlement is in A. removes to B. and before he has gained a settlement there, has a son born in B., the son is settled in A. But if the father gain a new settlement either in B. or any other parish, he gains it for his son as well as for himself, so long as the son remains part of his family, or is (as it is called) *unemancipated*. Such was the judgment of *Holt*, C. J. in *Cumner v. Milton*, 2 Salk. 528; where a man settled at Cumner and having several children born in that parish, afterwards removed to Milton with his children and gained a settlement there, where he becoming chargeable, the justices erroneously supposed the children were removable to Cumner, and made an order accordingly, which was quashed.

Children, wherever born, take their parents' settlement, and each successive settlement acquired by him.

St. Giles's, Reading, v. Eversly, Blackwater, 1 *Stra.* 580; 2 *Ld. Raym.* 1332. It was ruled by all the court, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement without ever having been there before.

And in *Sowton v. Sydbury, Andr.* 345, *Lee, C. J.* said, "The true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement."

The death of the father before the child is born will not defeat its right to a settlement where the father was last settled before his death. (*Rex v. Clifton, Vin. Abr.* 382; 2 *Bott*, 38.)

Rex v. Stone, 6 *T. R.* 56. M., the wife of T. Davenport, and her infant daughter, were removed from Stone to Leighford in Staffordshire. The sessions quashed the order, stating that T. had left his wife and family for three quarters of a year, during which time she had not heard of him, nor had he since been in either township. The settlement of T.'s father was in Leighford, but T. himself was not born there, and it did not appear by any evidence that he had gained any settlement in his own right. It was further stated, that the removal had been made without any examination of Thomas, the husband of Mary, and that due diligence had not been used by the respondents to find him out. Lord *Kenyon, C. J.* said, "That there was nothing in the case; that the evidence produced was legal evidence, and if not contradicted, sufficient to establish the settlement in Leighford; but that the sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken." The order of sessions was therefore quashed.

Rex v. St. Matthew's, Bethnal Green, Burr. S. C. 482; 2 *Bott*, 54. A man whose settlement was not known, married a woman who was settled in the precinct of St. Katherine's; they had a son born in Bethnal Green, which son married a woman settled in St. Leonard, Shoreditch, and had several children by her. It was argued that these children ought to follow the acquired settlement of their mother, and not their father's, which was only a derivative one from their grandmother, who had married a Frenchman, who had no settlement. But the court said, that there is no difference between an acquired and a derivative settlement. And the rule laid down was this: that the child's settlement follows that of its father, if its father's can be found, and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. And these children were adjudged to be settled at St. Katherine's.

Rex v. St. Mary, Cardigan, 6 *T. R.* 116. E. J., her daughter M., and J. and J. J., sons of her husband by a former wife, were removed from St. Mary, Cardigan, to L. Order quashed. Case:—The pauper's husband was settled in L.: he was convicted of sheep-stealing in 1770, and sentenced to death, but before execution he escaped from gaol. Two years afterwards he returned to Cardigan, and continued there till 1792; during that time he married, and his wife had by him John, one of the persons removed; on her decease he married the pauper C., and had the pauper Mary: he afterwards absconded in 1792. The wife's settlement before marriage was in St. Mary, Cardigan. It was argued that the father's settlement was destroyed by his attainder. Lord *Kenyon, C. J.* "A settlement is not the property of any man; it cannot escheat, neither can it be called a franchise: in the case of a franchise it was rightly decided, that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was before his attainder settled in the parish to which the paupers were removed, and I think that the father's settlement was communicated to them. It would be another question whether the man himself could acquire a settlement after the attainder."

Rex v. Haddenham, 15 *East*, 463. Removal of E. Hill, from Thame to Haddenham, was confirmed. Case:—E. Hill was born in Thame, in May, Vol. IV.

1. Derived from the Father.

Where the father gains a settlement after the child's birth, the child takes it also.

Therefore a child may be removed with the father to his settlement, though it have never been there before.

A child born after the father's death follows his settlement.

Proof of the father's settlement will establish the settlement of the child, if nothing appear to the contrary.

The children take the father's settlement, derived from their grandmother, in preference to that of their own mother.

The settlement of a parent, acquired before his attainder, is communicated to his children born afterwards.

A settlement not a property.

A convicted felon, discharged under the sign manual,

1. *Derived from the Father.*

may acquire a settlement by purchase.

1791, and at the time of her birth the settlement of her father, S. Hill, was in Thame. She had not acquired any settlement in her own right. In 1790, S. Hill was convicted of horse-stealing, and received sentence of death. An instrument, under the sign manual, was then produced, which recited that S. Hill had been convicted of horse-stealing, and had sentence of death passed upon him; and that the king was induced to grant him a free pardon; and it directed S. Hill to be forthwith discharged out of custody, and that he be inserted in the next general pardon that shall come out for the Oxford circuit, without any condition whatsoever. Given, &c. By his majesty's command, W. W. Grenville. Search had been made in the office of the clerk of assize of the Oxford circuit, and it did not appear that any general pardon including S. Hill had been made out: it did not appear, by any evidence, that any general pardon, including S. Hill, or any special pardon to him under the great seal, had been granted. Pursuant to the direction of the instrument under the sign manual, (a) S. Hill was shortly after discharged, and has been since at large unmolested. In 1803, S. Hill purchased, for 100 guineas, two cottages in Haddenham, copyhold of inheritance, held of the manor of H., which were surrendered to the use of S. Hill, his heirs and assigns, and he was admitted tenant thereof, according to the custom of the said manor, and took possession of and resided on the premises so purchased by him, and still continues to reside on part thereof, and has sold and surrendered the remainder. Lord *Ellenborough*, C. J. said, "The point raised is of some doubt, and of more general importance than usually arises on settlement cases. In the form of it a purchase was made, which satisfies the terms of 9 Geo. I. c. 7, s. 5, 'that no person shall acquire any settlement in any parish for or by virtue of any purchase of any estate or interest in such parish, whereof the consideration for such purchase doth not amount to 30*l.* *bonâ fide* paid for any longer time than such person shall inhabit in such estate,' &c. Now this was in its form a purchase for more than 30*l.*, and he resided on it for more than forty days, and he has not been removed from it. Who then was in a condition to remove him for the forty days? The lord, who has, by admitting, accepted him for his tenant, (even if he could, after that admission, object to him,) has not objected. If the lord had no notice of the objection at the time of the admission, I do not mean to say that he was afterwards precluded from making the objection; but he has not in fact objected, and the tenant has now continued for nine years in possession; and, by the statute of limitations, part of the rents, issues, and profits, can be no longer recovered from him; so that if he had a defeasible estate during the first forty days, he has held the estate undefeated for more than that period, which cannot now be impeached. And whether or not the crown could have impeached his title, he has now held the estate under a title, not defeated for above forty days." The other judges assented. Order confirmed.

2. DERIVED FROM THE MOTHER.

2. *Derived from the mother.*

The child's settlement follows that of its father, whether acquired by his own act or derived from *his* parents, till it can be traced no further; recourse shall then be had to the settlement of the mother.

Rex v. St. Mary, Leicester, 5 Nev. & Man. 215. A *prima facie* case of settlement, by evidence of the place of birth of the pauper, may be answered by proof of the maiden settlement of his mother, without showing that his father had no settlement.

Berkhamstead v. St. Mary, North Church, 2 Sess. Ca. 182; 2 Bott, 51. The father ran away, and the mother went and resided on an estate devised to her. One question was whether the children could gain a settlement by

(a) The effect of a pardon under a sign manual is now equivalent to one under the great seal. s. 1. See also *Doe d. Evans v. Evans*, 8 D. & R. 399; 5 B. & C. 585. 6 Geo. IV. c. 25,

residing with the mother (a) on such estate, where the father had *never lived*? Lord Hardwicke, C. J. held, "That as it did not appear that the father was dead, the court must suppose him to be living; and in such case the children could gain no settlement but what was derived from their father."

Rex v. Westerham, Fol. 252; 2 Bott, 108. An Englishman, whose settlement was not known, married, had a child, and ran away: the child was then nine years of age. By the court: "The mother and children ought to be settled where the mother was settled before marriage."

St. Giles's v. St. Margaret's, Fol. 251; 2 Bott, 107. S. E., with her daughter, aged five years, was removed from St. Margaret's to St. Giles's, as being the place of their mother's settlement before her marriage, she having married an Irishman who had no settlement. And it was adjudged that her daughter should be settled with her mother in St. Giles's, where her mother's settlement was before marriage. (S. P. *St. Botolph v. St. John's*, Burr. S. C. 367; 2 Bott, 109).

Rex v. St. Paul's, Shadwell, 2 Sess. Ca. 113. Resolved by Eyre and Fortescue, Js., that where the father, being a foreigner, had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth.

St. George's v. St. Katherine's, Ld. Raym. 1474; 2 Bott, 47. A man settled in St. Katherine's married, and had six children born there, and died. After his death, the widow went into St. George's with her children, and rented a house of 12l. a-year, and lived in it with her children four months. The question was, whether the children should have the settlement of the mother in St. George's? And the whole court were of opinion that they followed the mother's newly-acquired settlement. Parker, C. J. "There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law: and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her."

Woodend v. Paulspury, 2 Ld. Raym. 1473; 2 Stra. 746. J. Buncher was settled at Woodend, and died, leaving a widow and one daughter, aged 14 years. The widow removed to Paulspury, into a messuage of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at Paulspury? And it was judged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement and a mother's, in such cases as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her.

Barton Turfe v. Happisburg, Burr. S. C. 49; 2 Bott, 52. T. Man being settled in Barton Turfe died. After his death his widow removed to Happisburg, and occupied lands there, devised to her by her father. Her daughter, of the age of thirteen years, lived with her mother as part of her family for a year and a half. By the court: "The daughter gained a new settlement in Happisburg, by living with her mother there, as part of her family, upon the mother's own estate. For a child may gain a settlement

2. Derived from the Mother.

Father having no known settlement and run away, the child shall be settled with the mother.

So where the father was an Irishman, having no settlement.

So where the father was a foreigner.

Children follow the settlement of the mother, acquired after the death of the father, and during her widowhood.

Same point.

Same point.

(a) The mother herself could gain no settlement by this estate, as her husband was living, and as he had not resided on the estate at all, no settlement in that parish could be derived from him in that parish.

2. *Derived from the Mother.*

But if the mother gain a subsequent settlement by intermarriage, the children by the first marriage will not follow such settlement.

under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had."

Same point, *Rex v. Oulton*, 2 Burr, S. C. 64; 2 Bott, 53.

Wangford v. Brandon, Carth. 449; 2 Salk. 482. Three men of Wangford married three widows of Brandon, each of which widows had children by their former husbands, some under seven, some above seven years of age. It was holden that the children did not gain a settlement in Wangford, nor were removable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for *nurture only*; yet still Brandon must relieve them there, and not Wangford. But the children above the age of seven years ought not to be removed at all, being settled inhabitants of Brandon; and the removal of the mother shall have no influence on the settlement of her children.

In *Cumner v. Milton* (*ante*, 288), it was said that if, after the death of the father, the mother marry again to a husband who is settled in another parish, this is an accidental settlement of the mother, and as she is now become one person with him, shall not gain a settlement for her children.

Same point.

St. Giles's in the Fields v. St. Clement's, Burr. S. C. 2; 2 Bott, 49. J. M., the pauper, was an infant of nine years of age. His father's settlement was not known: his mother's settlement before their marriage was known: his father died: his mother married a second husband, who had a settlement; and she gained a new settlement by this second marriage. By the court: "J. M.'s settlement is where his mother was last settled before her marriage with J.'s father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband." And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expense of the parish where their legal settlement is.

But now every man who marries a woman having children, legitimate or illegitimate, is liable to maintain them till they are sixteen, or the mother dies; and for the purpose of the 4 & 5 Will. IV. c. 76, they are to be deemed part of his family. (*Id.* S. 57, Appendix.)

3. OF EMANCIPATION.

3. *Of emancipation.*

A child will follow each newly-acquired settlement of his parents so long as he continues a member of the family, that is, until he is *emancipated*, and no longer. In case the father have no settlement, the mother is the head of the family, for the purpose of communicating a settlement to the children, or subordinate members thereof; and she assumes the same rank, with the like capacity to confer the same privilege, after the death of her husband, who had a settlement, until she herself becomes again a *subordinate* member of another family, by contracting a fresh marriage.

General rule for children under twenty-one.

Emancipation is effected when the child ceases to be a subordinate member of his father's or mother's family. This may be accomplished in various ways, but the rule laid down by Lord Tenterden supplies a safe criterion by which to ascertain when the emancipation is complete. His lordship, in *Rex v. Wilmington*, (1 D. & R. 140; 5 B. & Ald. 525,) said, "It is of importance to lay down a general rule for the guidance of magistrates on the subject of emancipation, and the best which I can suggest is this, 'that during the minority of a child there can be no emancipation *unless he marries*, and so becomes himself the head of a family, or *contracts some other relation*, so as *wholly and permanently to exclude the parental control*.' I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be, however, no question, that in that case he is only removable to his own acquired settlement. Here the pauper was under twenty-one, and had neither married nor contracted any such relation as I have described at the time when his father had acquired the settlement at Bow. He was, therefore, not emancipated." See also *Rex v. Oulton*, 3 Nev. & Man. 62.

To the same effect is the rule laid down by Lord Kenyon, in *Rex v.*

Roach, (6 T. R. 247.) "The rule to be extracted from the cases is this: if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them again during the age of pupillage, he is to all intents a part of his father's family, and his settlement will vary with that of his father; but if, when that time arrives when, in estimation of law, the child wants no further protection from the father, the child remove from the father's family, he is not, for the purpose of a derivative settlement, to be deemed part of that family; this rule will reconcile all the cases, and will be found to be an intelligible one."

Subject to the above exceptions of marriage, and the acquiring a settlement of his own, it may be further stated that, "during the minority of the child he will remain, under almost any circumstances, unemancipated; but where a new settlement is acquired by the parent after the child has attained the age of twenty-one, it will not be communicated to the child unless *in fact the child continues part of the family*. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving in the militia, he no longer remains a member of the family."—Lord Tenterden. *Rex v. Hardwick*, 5 B. & A. 176.

An infant then will be emancipated by marriage; by acquiring a settlement. But absence from in any service, and independence of, his parents, and return to the parental control before twenty-one, does not emancipate him.

Adults may be emancipated by actual separation, or by remaining separate after coming of age.

Although it is said that the acquisition of a settlement by a child does not properly fall under the head of emancipation, yet as it has been generally classed under that title, the decisions upon that point are enumerated here.

Rex v. Much Cowarne, 2 B. & Ad. 861. J. Yarnold was removed from Great Wittley to Much Cowarne. Order confirmed. The pauper was born in 1793, and was always an idiot. He and his parents resided in Great Wittley, the place of his father's settlement, till 1822, when the mother died. In 1824 the father left the pauper (then 31 years old) in Wittley, and hired himself as servant, and in 1826 married a second wife, and then went to Much Cowarne, and resided there upon some property belonging to his second wife until her death in 1830, and there gained a settlement. After the father left Wittley he never returned to it, but the overseers took care of the pauper and never applied to the father for any assistance or remuneration for what they paid. The sessions found that the pauper was incapable of taking care of himself through imbecility of mind at the time of the separation from his father, seven years since, and that previously he was not emancipated from the same cause. Lord Tenterden, "The general rule is, that until a child reaches twenty-one he is not emancipated, unless he becomes the head of a family or gains a settlement; but if after twenty-one, he separates himself from his father's family, he is emancipated. Why is twenty-one the period thus fixed by the law? Because at that age the party is presumed by law to be competent to take the management of his own affairs. Here the pauper never was and never will be competent to do so. The reason therefore for which that period was fixed fails upon other cases wholly fails in this." Parke, J. "If the pauper were a minor, he would continue unemancipated. Now it is found that he is incapable of maintaining and taking care of himself, he must therefore be considered in the same situation as if he had remained a minor." Taunton, J. "The rule has been correctly stated to be, that where a party after twenty-one separates from his father's family and can provide for himself, and requires no further protection, he is emancipated. That rule does not apply here." Patteson, J. "The words in *Rex v. Hardwick*, (*supra*) must apply only to a member of the family capable of supporting himself." Order confirmed.

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General rule for adults.

An idiot is always a minor and not emancipated.

So also where a child was rendered incapable of work by her hands being burnt off, she followed her father's settlement, although she continued in the workhouse after twenty-one. (*Rex v. Broadhembury*, 4 Doug. 241.)

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Marriage by a son of age, is, of itself, an emancipation, although he continue to reside with his father's family.

1. *Emancipation by Marriage.*

Rex v. Everton, 1 East, 526. The pauper's father was settled in E. and resided there from 1779 to 1790, with his family, including the pauper. In 1782, the pauper, then twenty-two years of age, married, still living in the family of the father as part of it: in 1783 his wife died. The pauper still continued with his father. In 1790 he removed with his father to Great Barford, and while the pauper continued there with the father, the father acquired a settlement there. In 1796 the pauper married again, still continuing with his father, and had children, but he gained no settlement in his own right. The pauper and his family were removed from G. B. to E., and the sessions affirmed the order; considering that the pauper was emancipated by the first marriage. And Lord Kenyon, C. J., said, "The sessions could not intend more by the statement that he continued a part of his father's family, than to inform us that locally and personally the pauper lived in the same house with his father, and took his fare at the same board with him; but they wish to be informed, whether that so far constituted him in point of law one of his father's family under the circumstances, as that after his marriage he would follow a newly acquired settlement of the father, and I am of opinion that it did not." Order affirmed.

Before this case, separation from the family, as well as marriage, seems to have been thought requisite.

Eastwoodhay v. Westwoodhay, 1 Stra. 438; 2 Bott, 57. Thomas Baker, the father of the pauper, in 1699 purchased a copyhold estate of 11l. a year in Westwoodhay, whither he and his family and servants removed, and staid there till 1716: in 1716 he purchased a cottage of 1l. 12s. 6d. a year in Eastwoodhay, and went and lived upon it till his death; but Robert his son, the pauper, who in 1716 was of age, staid behind in Westwoodhay, where he married, and had worked ever since on his own account. Pratt, C. J. "The question is not, where this man and his family are settled, but whether there appears a settlement of him in Eastwoodhay? If he had gone thither with his father, as part of the family, possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in Eastwoodhay. I think his settlement is in Westwoodhay, which was the last place where he lived as part of his father's family." To which the rest of the Court agreed.

St. Michael's Coslany in Norwich v. St. Matthew's in Ipswich, 2 Sess. C. 129; 2 Stra. 831; 2 Bott, 58. E. Williams, Anne his wife, and E., S., and A., children of the said E., the father, were removed from St. Michael in Norwich, to St. Matthew in Ipswich. Case:—Edmund Williams, the grandfather, was settled at Shepton Mallet and removed to Bruton, with a certificate from Shepton Mallet, where Edmund the son was born; he continued there with his father till he was nineteen years of age. Then E. the son left his father and came to Norwich, and there he married two wives; by the first he had E. the grandson; and ten years after his wife died. Then he married Anne, his now wife, by whom he had S. and A., two other children; since whose birth, about two years ago, E. Williams, the grandfather, gained a new settlement at St. Matthew's, Ipswich: but Edmund the son hath never lived with his father at Ipswich, or any where else, since he lived with him at Bruton. Mr. J. Reynolds, "I do not see how the father can gain a settlement for the son, nineteen years after the son has left him." Lord Raymond, C. J. "I think it odd, that an old man of sixty, who has left his father for forty years, shall follow the settlement of his father as often as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents because of nurture." And per Cur. "The reason why we inquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act: but it is almost a contradiction in terms to say, that a man, who has left his father forty years, shall follow the settlement of his father."

Bugden v. Ampthill, Burr. S. C. 270; 2 Bott, 60. J. G., the father of the

A son is emancipated by the father's removing to another parish and the son remaining behind and marrying, and his settlement will be in the parish where he and his father last lived together.

A son at nineteen, leaving his father and going into another parish and marrying, is emancipated, and his children can derive no settlement from their grandfather.

Marriage and

pauper, came by certificate from R. to A. They remained together at A., under the certificate, till the pauper came of age. After which, the pauper married in A., and left his father, and lived there with his wife and children, distinct from his father, till removed by this order. Three years after the marriage the father removed to B. and there gained a settlement, but the pauper never lived there. And it was held that "the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father."

Same point in *Rex v. Heath*, 5 T. R. 583, and *Rex v. Mortlake*, 6 East, 397. See *post*, Certificate.

Rex v. Walpole, St. Peter's, Burr. S. C. 638; 1 Bla. Rep. 669. The pauper being settled at Outwell as part of his father's family, enlisted for a soldier, and continued in the service four years; after his discharge he came home to his father, who had removed from Outwell, and then lived at Walpole, and rented and occupied a farm there of about 50*l.* a year, and continued there with his father about twelve or fourteen weeks, and afterwards worked at different places as a labourer, till he was removed by an order from Wisbech to Walpole. He had never gained any settlement of his own. The sessions confirmed the order. But both the orders were quashed by the court, no cause being shown.

It does not appear whether the pauper was under age or not at the time of the discharge, and therefore the case is of very little authority; for it is clear that if the return to the father's family be while the son is still a minor, the emancipation is not complete. See *Rex v. Rotherfield Greys*, *post*, 297; and *Rex v. Whitehaven*, *ante*, 99.

Rex v. Stanwix, 5 T. R. 670. Jane and Isabella Campbell, and the five children of Isabella, were removed from St. Mary's, Carlisle, to Stanwix. Order confirmed. Case: Jane (since dead) was the widow of A. Campbell, a Scotchman: Isabella is the widow of W. Campbell, the son of Alexander and Jane; and the five children are the children of William and Isabella. Alexander became seised of a messuage and tenement in Stanwix by descent, upon which he resided upwards of a year, about 1774 and 1775. Some time before, and until the premises in Stanwix descended to Alexander, he resided in Scotland, where William, about nineteen years of age, enlisted and left his father's family in Scotland, which was some years before the above premises descended to his father. William, after having been for some time beyond the seas as a soldier, returned to England, (his father being then dead,) and married the pauper Isabella at Plymouth, and went beyond sea again as a soldier, and at the end of two years returned again to England; and he came to Rickergate quarter, adjoining to Stanwix, where he lived six years, and then removed into St. Mary's, where he lived four years, but never acquired any settlement by any act of his own. Alexander sold part of the estate in Stanwix in his lifetime, and resided upon the residue, consisting of a house and garden of the yearly value of 2*l.* 5*s.* till his death, which premises he devised to Jane his wife for life, and after her death to William his son, his heirs and assigns for ever. But William never became possessed thereof, nor resided thereon, having died in the life-time of Jane, who, after her husband's death, continued to reside upon the premises for several years, when she removed to her son in St. Mary's, about four years ago, and continued to live with him there till his death, and afterwards with his widow, until Jane herself died in January last. And it being urged, that in *Rex v. Cold Ashton* it was said that a child cannot be emancipated unless he has gained a settlement of his own, for that until that time the derivative settlement of his parents is not abandoned, Lord Kenyon, C. J., said, "that means as long as the son continues a part of his father's family. But here the son was emancipated when the father acquired a settlement in Stanwix; (b) he had ceased to be a part of his father's family some years before, and had put himself under the control and government of others; and it is immaterial

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living separate from the father, amounts to emancipation.

A son enlisted for a soldier, and was absent four years, and then returned to his father: Held to be emancipated.

Where the son enlists as a soldier, and thereby puts himself under the control of others, it is an emancipation. (a)

(a) But see how this doctrine is limited and explained by the subsequent cases.

(b) At which time it appears by the facts that the son was of full age and a soldier.

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Serving in the militia is not, of itself, an emancipation, although he continues after twenty one. (a)

whether or not he had gained a settlement for himself. The case of *Rex v. Walpole* (*ante*, 295), where the son had enlisted himself as a soldier, was considered so clearly to be the case of an emancipation, that it was not even argued." Both orders quashed.

Rex v. Woburn, 8 T. R. 479. J. Williams, the father of T. Williams, the pauper, previous to 1756 was settled with his family at Leighton Buzzard. The pauper was born in that parish and baptized there in 1756. In 1763 J. W., with his family (including T. W.) removed to Woburn, and gained a settlement there in 1774. In 1772, previous to such settlement, the pauper entered into the militia with the consent of his father, then a serjeant in the same militia; the pauper continued therein a drummer till he was twenty-three years of age: during which time his pay was received by his father. From the time of the pauper's entering into the militia until the year 1788, when he married, he lived in his father's family, except at the times when he and his father were absent upon duty in the militia. He was removed from L. B. to Woburn, and the sessions affirmed the order. *Per Lord Kenyon*, C. J. "The argument that has been used in support of the present rule, if it proves any thing, proves too much; for it tends to show that if a child be for any period of time, however short, under any other control than that of the father, he is thereby emancipated from his father's family. That is the case of every private in the militia, even in time of peace; he is subject to military control during a part of the year, and therefore not under the father's control during that time; and yet it was contended that such a person is by that means emancipated. A drummer is generally taken at a very early period of life, and if he only continue in that situation for twenty-four hours, he is, it is said, emancipated from his father, he is to be taken from the protection of his father, and if his father is removed elsewhere, the child is to remain unprotected. The proposition is monstrous. In *Rex v. Walpole St. Peter's* (*ante*, 295), the court proceeded on this ground, that he was engaged to serve for life, and was liable to be sent into foreign countries. But a son is not emancipated by the circumstance of his being under some other control than that of his father. For in *Rex v. Halifax* (*post* 301), where the son served an apprenticeship for four years, it was decided that he was not emancipated. There may be two kinds of control: a son may be under the control of his father and also under the control of the law; as if he be ordered to assist a constable in the execution of his duty, that is a temporary control. I am, therefore, of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement at W." *Grose*, J. Of the same opinion, as it appeared that he was only sixteen years of age when he entered; that he did so with his father's consent, a serjeant in the same militia; that his father received his pay: and that till he married he lived in his father's family. *Le Blanc*, J., said, "That in *Rex v. Walpole St. Peter's*, the son was totally independent of his father for four years." He added, "suppose he had engaged to live as a servant unto a farmer in the neighbourhood for six months, he would during that time have been under the control of his master, but on returning to his father's family he would again become subject to his father's control and would not have been emancipated."

A person serving in the militia when he comes of age is emancipated.

Rex v. Hardwick, 5 B. & Ald. 176. Removal from Stanton Harcourt to Hardwick. Order confirmed. Case:—The pauper was born in Hardwick, and resided there as a part of the family of his father, who was settled there. In 1817, when the pauper was eighteen years of age, he was drawn for the militia, and served therein for five years as a balloted man, the regiment during that period being embodied and in actual service. He joined the regiment in 1808, and in 1809, having obtained a furlough for three weeks,

(a) It will be observed, that in *Rex v. Woburn* the pauper remained with the father's family during the whole period when he was on duty as a militia-man, and then when he was on duty he was still in some sense under the parental

control, the father being in the same service and receiving his pay. In *Rex v. Hardwick* these facts did not exist, and this seems to be the ground of distinction between the two cases.

he returned to the house of his father, who was still residing at Hardwick, and lived with him for about a fortnight. In 1811 the pauper obtained a second furlough for a fortnight, and went again to his father's, who was then residing in Stanton Harcourt, where he remained for about twelve days. The pauper was discharged from the militia in 1813, when he returned to his father in Stanton Harcourt, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in Stanton Harcourt. *Abbot, C. J.* "The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time the father gained his settlement in Stanton Harcourt, this pauper remained a member of his family. Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained twenty-one, it will not be communicated unless the child in fact continues part of the family. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving, as in this case in the militia, I think he no longer remains a member of the family. In the present case, I think that the sessions have come to a right conclusion, in deciding that the legal settlement of the pauper was at Hardwick." *Bayley, J.* "If a child be separated from his father's family, and does not return till after twenty-one, he ceases to be a member of that family, and consequently his settlement will not, after twenty-one, shift with that of his father. I think therefore that the sessions are right, and that this case is hardly distinguishable from *Rex v. Walpole St. Peter's*." *Holroyd, J.* "The distinction between a compulsory and a voluntary separation seems to me to be immaterial. The case must follow the same rule as *Rex v. Walpole St. Peter's*." Order of sessions confirmed.

Rex v. Rotherfield Greys, 1 B. & C. 345; 2 D. & R. 268. Thomas Binfield was removed from Tooting Graveney to Rotherfield Greys. Order confirmed. Case:—In 1807, the pauper's father removed with his wife and family, including the pauper, to Tooting, and took a cottage there, which he has held ever since at 3s. per week. The pauper resided at Tooting with his parents till 1813, when he enlisted in the marines, and went abroad in that service. He remained in the marines till the 8th September, 1815, when in consequence of the reduction of that corps he received his discharge, and returned the same day to his parents at Tooting, being then under the age of twenty-one years, and resided with them from that time until some time after his father hired a stable in Streatham. About a year after the pauper's return home, the pauper being then more than twenty-one years of age, his father hired a stable in Streatham, at 4s. a week, which he held for about nine months, still continuing to reside at the cottage at Tooting. The cottage and the stable together were above the annual value of 10*l*. The pauper had never done any act to acquire a settlement for himself. *Bayley, J.* "I am of opinion that the pauper was not emancipated. In order to constitute emancipation, the party ought to be wholly and permanently free from the parental control. In this case, the pauper by enlisting into the marines, became subject to the control of the crown, and continued subject to that control as long as the period of his service continued; and if he had remained in the army till the age of twenty-one years, his emancipation would undoubtedly relate back to the time of his enlistment: but before he attained the age of twenty-one years, the relation between him and the crown ceased, and he returned to and constituted part of his father's family, and of course again became subject to the parental control. He, therefore, was not emancipated. This is consistent with the opinion of Lord Kenyon, C. J. and *Lawrence, J.* in *Rex v. Roach* (6 T. R. 247), with the general rule laid down by Lord Tenterden in *Rex v. Wilmington* and *Rex v. Hardwick* (ante, 296). The pauper therefore was not emancipated, and he acquires his father's settlement in Tooting." *Holroyd, J.* "By entering into the marines, the pauper ceased to be under the control of his father, and became subject to the control of the crown, as long as that state of circumstances continued. But

A minor enlisted into the marines, was discharged from that service, and returned to his father's family before he attained the age of twenty-one: Held, that he was not emancipated.

Emancipation relates back to the time of enlistment.

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before he attained the age of twenty-one, he ceased also to be under the control of the crown, returned to his father's family, and again became subject to his control, and consequently was not emancipated. It has been said, that this, being an engagement for life, constitutes in itself a complete and perfect emancipation. It was an engagement for life, so as to bind the pauper to serve for life, if required; but the duration of the service depends on the discretion of the crown." *Best, J.* "By the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years: but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue. The parental authority, however, is suspended, but not destroyed. When the reason for its suspension ceases, the parental authority returns." Order of sessions quashed.

Rex v. Bleasby, 3 B. & Ald. 377. Removal from Bleasby to Thurgarton. Order discharged. Case:—The pauper was born at Gonalstone, the place of his father's settlement, in June, 1785; and at thirteen years of age was hired and served for a year with J. Hind, of Gonalstone. When the pauper was about sixteen years of age, his father gained a settlement in Thurgarton by renting a tenement of the yearly value of 10*l.* on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in Gonalstone, until he was twenty-one years of age,) to reside in his father's house at Thurgarton, working during the time as a journeyman frame-work knitter, and occasionally paying part of his earnings to his father, who was a labourer, as a compensation for his board. *Abbott, C. J.* "I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards during his minority return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in Gonalstone, and after that time he derived his settlement no longer from his father, but from the contract of hiring." *Bayley, J.* "I cannot agree with what is stated in *Rex v. Keel* (a) (*Cald.* 144, cited *post*, 310), on this subject; and indeed the point was no part of the decision in that case. Both there and *Rex v. Ingworth* (8 Term R. 339, cited *post*, 310), the question was, whether a certificate was discharged by a hiring and service in the certifying parish. And the court held it was not, probably on the ground that it was better to hold that no settlement gained in the parish granting the certificate should affect the parish to whom it was granted, it not being a question into which the latter would be likely to inquire. These cases are only distinguishable from the present. The cases relating to certificated persons ought to be wholly laid out of the question. It has long been settled that the settlement of a child, who has acquired one of his own, does not shift with that of the father. It is said that the pauper has not gained a settlement of his own in Gonalstone, because he had one there before; but the words of 3 W. & M. expressly provide, that if an unmarried person shall so be hired and serve, he shall be judged and deemed to have a good settlement." *Holroyd, J.* "I can see no reason why a party should not gain a new settlement in the parish in which he had one before, where originally he had it in another right, as derived from his father, and subsequently in his own right, under the contract of hiring and service." Order confirmed.

If provision be made for a child under age, and independently of the parents, and the child lives away from the father's family, so that he exercises no superintendence or immediate actual control over the child, still this will not amount to an emancipation, as is established by the following cases."

(a) The dictum quoted in *Rex v. Keel*, settlement in the place where he was was "that the party can acquire no new settled before."

If a child gains a settlement in his own right, though in the parish in which he was previously settled by parentage, he is thereby emancipated.

Rex v. Tottington Lower End, Cald. 284; 2 Bott, 64. E. Holt, wife, and family, were removed from Broughton to Tottington Lower End, Lancashire. Order confirmed. The pauper was the son of T. Holt, who at the time of the pauper's birth was settled in Tottington. When he was seven years old his mother died, and he and his father went to live with his uncle in Pilkington; his father boarded; but his uncle, *out of charity* to his father, who had four other children, and to keep him off the town, *took the pauper* and provided for him meat, drink, lodging and clothes; in about eighteen months his father went to reside in the adjoining township of Ratcliffe, but the pauper continued with his uncle till he was ten years old, about which time his uncle's wife beat him (his uncle being from home), and *he went to his father's house* and stayed there about a fortnight; but his father not having a loom to accommodate him as a weaver, *desired him to return* to his uncle, which he did, and his uncle taught him to weave in the day, and sent him to school in the evenings; his uncle provided him with meat and clothing, and received the money he earned; he stayed with his uncle on these terms until he *was sixteen years old*; but from his first going to his uncle to that time, he now and then went to see his father at a holiday time or so, and sometimes stayed all night. When he was fourteen years old, his father came into Pilkington, and gained a new settlement there by renting 15*l.* a-year. The pauper considered his father's house as his proper home, because he was his father; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper whenever the uncle turned him away; and when he was sixteen years of age, having been struck by his uncle, *he told him he would leave him and return home to his father*; his uncle said he might; upon which *he went* to his father and told him the circumstances. *The father* said he was liable to take him in, and *did receive him as part of his family*; he stayed with his father about a week, and helped him to get his hay; and when that was done, his father not having a loom, *desired him to return* to his uncle and see if he would take him in. *He did* return, and agreed with his uncle to work for himself, and pay for his board; and it did not appear to the sessions he ever returned to his father. Some time after his last return to his uncle, having taken 2*s.* 6*d.* or more of him, his father gave his uncle 2*s.* 6*d.* as amends for the same. The pauper had gained no settlement in his own right. The father says, if the uncle had gone to live a great distance from him, he would not have suffered the pauper to have gone with him.—Lord Mansfield, C. J. “The pauper considered himself as part of his father's family, and the father considered him the same. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not a part of his father's family. The uncle was under no obligation to do any thing for him, or to keep him an hour: and the boy, in point of fact, on every disagreement went to his father's house as his home, and he received him, as he was bound to do. I see no ground for considering this as an emancipation.”

Rex v. Uckfield, 5 M. & Sel. 214. The sessions confirmed an order for the removal of J. Marshall from Hurstperpoint to Uckfield. Case:—The pauper, being settled in Uckfield, on the 10th of April, 1802, was hired and served for a year to Jeffery, residing in Tonbridge. The pauper was a widower at the time of this hiring, and had one daughter, Frances, eighteen years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather by his will devised the residue of his estate (which amounted to 1600*l.*) to his executors in trust, to place the same out upon security, and pay the interest to his wife for life for her own use; and he directed that his wife should, during her life, thereout educate and maintain Elizabeth and Frances, the children of his late daughter Elizabeth Marshall, and after the decease of his wife he gave the residue equally to be divided between the said Elizabeth and Frances; but in case his wife should die before they attained twenty-one, the interest was to be applied to their

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Residence of a child by his father's direction at an uncle's house for support, the child visiting his father's house occasionally as his home, is not an emancipation.

Where pauper, at the time of hiring himself, had a daughter of the age of eighteen, who, from the age of four, had lived with her grandfather, and had been maintained by him until his death, and afterwards by her grandmother, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to

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the grandmother for life, and after her decease to the daughter: held, that the daughter was not emancipated, and consequently the pauper was not within stat. 3 & 4 W. & M. a person *not having a child* at the time of the hiring.

maintenance and education during their minority, and upon their attaining twenty-one respectively, the principal to be paid to them; and if either of them should die under age and without leaving issue, her share to go to the survivor; but if either should die under age leaving issue, her share to be equally divided between such issue, as they attained twenty-one, the interest in the mean time to be applied towards their maintenance and education. After her grandfather's death, Frances continued to live with her grandmother, and was entirely supported by her until she had attained twenty-one, and was living with her at the time when the pauper hired himself to Jeffery, and never returned to her father. The question was, if the pauper gained a settlement in Tonbridge by this hiring and service. It was contended, that from the death of the grandfather the daughter became *suo jure* entitled to a maintenance of her own, for such was the effect of the direction in her grandfather's will: (a) so that from that time, which was prior to the hiring and service, she was no longer dependent on any one for support; and the relation between the parent and child, so far as regards any dependence or support, was entirely at an end. Lord *Ellenborough*, C. J. "This is a perfectly new head of emancipation. The question is, if, on account of a testamentary bounty left to this child by her relation, the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child for maintenance, if that should become necessary. If such a provision as this amounts to an emancipation, the consequence will be, that the devolution of an estate to a child, from the mother for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Lord *Kenyon*, in *Rex v. Witton cum Twambrookes* (*post*, 304), are the child's attaining its full age, or being married, or gaining a settlement for itself; or as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. Not one of these is the case here; it is a case *sui generis*. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now, the reason why it should be so considered is said to be this, that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The statute 3 W. & M. enacts, 'that if any unmarried person not having child or children shall be lawfully hired, &c.,' which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of his acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit of the grandmother, in the first instance, with a direction to her, certainly amounting in equity to an obligation, to maintain the child, and after the grandmother's death to the child. But this trust might have failed; the trustees might have violated it and not paid the interest to the grandmother, or she might have proved unfaithful to her trust and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in the situation of a person not having a child within the meaning of the statute; because he had a child, who would have a right to share with him, if he should be unable to provide one, a maintenance from the parish where he should have become settled, and who consequently might be a burthen to the parish. He was a person having a child, who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him, and he again might have claimed to have the control and custody of her at any time. The case has certainly been ingeniously argued; but I think it does not amount to an emancipation, either to discharge the rights of the one or the duties of the other." *Bayley*, J.

(a) See *Eacles v. England*, 2 Vern. 466.

"I am of the same opinion. The question is, if such a provision can be said to deprive the parent of his rights over his child, to resume to himself the care and custody of her, or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same, under the like circumstances, at whatever age the child might be? For the law makes no distinction in respect of the different ages of infants under twenty-one, at which time the parental authority ceases, and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grandfather should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him? I think that could hardly be contended. But, to come nearer to the present case, suppose, after the year's service of the father, the child then being of the age of nineteen, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement? and yet, if she was once emancipated, she could not, because she would be emancipated for ever. If then she would have been entitled to the father's subsequent settlement, that shows that the separate provision made for her by her grandfather's will, could not operate as an emancipation; I therefore think that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father's family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service; that is, a person not having a child within the meaning of the statute." *Holroyd, J.* "The maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father's control over the child also continued; and, therefore, there is no ground upon the cases, or upon principle, to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service." Order confirmed.

Rex v. Sowerby, 2 East, 276. R. Murdock and his children were removed from St. Mary to Sowerby. Order confirmed. Case:—Richard Stokell went with a *certificate* from D. to Sowerby, and there had a son born: R. S. died, and the son, being arrived at manhood, followed his father's business at Sowerby, hiring servants for it, but living with his mother in a house which she hired and rented after his father's death, and he never left this house or his mother, except for a few weeks in harvest time in one year. She had no concern with the business. The pauper was during this time, and ten years after the father's death, engaged by the son as his servant, and continued so for eleven years, and during that time was hired by him for a year and served the time. The main question was, whether the son was or was not emancipated? Lord *Ellenborough, C. J.* said, "that here was nothing like emancipation; that while the father was living, the son resided under his roof, and after the father's death he continued to reside with his mother, who was the representative of the father, and equally protected by the certificate: and this brought it within *Rex v. Hampton.*" *Grose, J.* "There is no pretence for saying that his going out for a few weeks at harvest time would operate as an emancipation." (See however *Rex v. Oulton.*)

Rex v. Halifax, Burr. S. C. 806; 2 Bott, 63. John Bragg, the father of the pauper, went with a *certificate* from Skircoat to Halifax, where the pauper was born. The pauper, when about fifteen years of age, bound himself apprentice by indenture to W. Smith of Halifax for four years, and served his master there for that time. (a) After he was out of his apprentice-

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An unmarried son carrying on business for himself, but living with his father's widow as part of her family, is not thereby emancipated.

A son nineteen years of age, treating his father's house as his home, and so considering it, is not emancipated,

(a) In the above case the son went to Halifax with his father under a *certificate*, and the 9 & 10 Will. III. provides that no person whatever, who comes into a parish by a certificate, shall gain a

settlement there except by renting a tenement of 10*l.* a year, or serving some annual office therein. The certificate not only disqualifies the certificated person from gaining a settlement for him-

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though he goes about the country working for himself.

Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's till after twenty-one: held to be not emancipated, but to follow his father's settlement.

Absence from the father's family does not emancipate the child if the return be before he is twenty-one years of age.

ship, and when he was about nineteen years of age, his father took a farm of 12*l.* a-year in Warley, and went and resided there several years: his son, the pauper, always after the father went to Warley, worked about the country as a stuff-weaver, but came to his father at Warley when he pleased, and kept his holiday clothes there, and considered his father's house as his own home: when he came to his father's house, he paid for what he had, and was his own master to go and work for himself whenever he pleased. Lord Mansfield, C. J. was absent. The other three judges thought that the son could not be considered as emancipated, or independent of or separated from his father. He went to his house when he pleased, and had his clothes there. Mr. J. Aston said, "that where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement where his father goes to reside: but if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles." The distinction was well laid down, he said, in the *Bugden case*; and he observed that in the case of *Walpole St. Peter's*, the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it.

Rex v. Huggate, 2 B. & Ald. 582. Removal from Nunburnholme to Huggate. Order confirmed. Case:—Thomas Lazenby, the father of the pauper, was originally settled in Huggate, where his father rented a farm. During the time that William L., the father of Thomas L., so rented the farm at Huggate, the latter was bound out apprentice till his coming of age. The master, during the whole of the apprenticeship, resided at Spaldington, under a certificate, at which place the apprentice served him until the expiration of the term. About the middle of the apprenticeship, William L. took another farm of 80*l.* a year, at Storthwaite, where he went to reside, and continued there during the remainder of his son's apprenticeship, and after it expired. He found his son, the apprentice, with clothes, except shoes and aprons, during the apprenticeship. Thomas L. occasionally visited his father during that time; and on one occasion, when he was ill, went to reside with him there for a fortnight during his illness. At the time when William L. went to reside at Storthwaite, Thomas L. was between eighteen and nineteen years of age, and when the apprenticeship expired, he went home for one night. The next day he went away, and went to work at various places for himself, but never gained any settlement by so doing. Bayley, J. "It seems to me, that Thomas L. was not emancipated. He is bound apprentice to a certificated person, and consequently could not by such service gain any settlement. Unless he does so, his domicile continues to be his father's house, and he is liable to be removed thither at any time. If, indeed, he had withdrawn himself from his father's family after twenty-one, no doubt it would be an emancipation from that period. But a separation whilst under twenty-one does not produce that effect, unless a subsequent settlement be gained. Here none was gained, and, therefore, his settlement shifted to Storthwaite with that of his father." Holroyd and Best, Js. concurred. Order of sessions quashed.

Rex v. Collingbourn Ducis, 4 T. R. 199. E. Chandler and his wife were removed from Collingbourn Ducis to Collingbourn Kingston. Order quashed. Case:—E. Chandler was born in Collingbourn Kingston, where his parents were residing under a certificate from Froxfield. At the age of nineteen he was hired for a year to serve J. Childs, of Buckholt Farm, as a carter, which he served. Buckholt Farm is extra-parochial, and has no parish officers. After the pauper had served the year at Buckholt, he returned to Collingbourn Kingston, and then being unmarried, under age, and not having done any act to gain a settlement in his own right further than aforesaid, was hired to and served S. Andrews of that parish for a year. The sessions being of opinion that the pauper was not emancipated, and that the certificate was not dis-

self, but none can be derived from or gained by a service under him. Besides, a pauper cannot gain a settlement by apprenticeship in a parish into which the family, of which he continues a member,

is certificated, unless the binding and inhabiting there both take place after he is twenty one. (See *Rex v. Manningtree*, 6 M. & Sel. 214; *Rex v. Morley*, post, 309.)

charged so as to enable him to gain a settlement in Collingbourn Kingston, by hiring and service, quashed the order of removal. Lord Kenyon, C. J. (after observing upon the certificate) "In cases of this kind, where the decisions of this court are to guide the judgments of the magistrates, it is of great importance that they should be consistent. Now I am not able to distinguish this case from the principle laid down in *Rex v. Witton-cum-Twambrookes*. It was there held, that a person under age, who after being absent from his father's family for a considerable time, returned to it before he was an adult, or married, and before he had acquired a settlement for himself, was not emancipated, but was entitled to the benefit of his father's settlement. So in this case the son returned before he had attained the age of twenty-one, not having gained any settlement for himself distinct from that of his father, nor having become the head of a family, and therefore this case must be governed by that of *Witton-cum-Twambrookes*. The distinction which has been attempted to be taken between some of the former cases and the present, that here the son put himself out to service, is not material; for until the age of twenty-one, not having done either of the acts above alluded to, he continued a part of his father's family." Order of sessions confirmed.

Rex v. Hardwicke, 11 East, 578. (Among many points in this case, one related to emancipation.) An appeal against an order for removal of J. Vipond, his wife and children. The sessions confirmed the order, and stated that John V., the father of Joseph, was settled in Fornsett St. Mary, in Norfolk, and about forty years ago came to reside in Hardwicke, on a tenement at 5*l.* 10*s.* per annum. The pauper, Joseph, was born in that parish; and at the age of fifteen, his father then residing on the said tenement, was apprenticed to S. W. of Besthorpe, and regularly served his time with his master, who resided in Besthorpe, under a certificate from Bunwell. During the first year of the son's apprenticeship, John, the father, purchased the tenement on which he resided at Hardwicke, for 87*l.* During his apprenticeship he was clothed by his father, and he occasionally visited him. At the expiration of the apprenticeship, the pauper, being then nineteen years of age, returned to his father's house in Hardwicke, where he stayed two days, and received some new clothes: he then went back to his former master, and engaged to work with him by the piece; and did so work at Besthorpe for a year and a quarter. Lord Ellenborough, C. J. said "As to the point of emancipation, that the son must be considered as having been re-incorporated in his father's family, having returned, and required and received his father's assistance, and therefore he followed his father's settlement, which he had acquired in the mean time;" and he said "that none of the cases of emancipation which had been decided on the ground of the children's marriage, or obtaining a settlement of their own in another parish, or being under a different control, incompatible with that of their parents, till after the age of twenty-one, applied to this case." Order confirmed.

Rex v. Offchurch, 3 T. R. 114. H. West and his wife were removed from Thurlaston to Offchurch. Order confirmed. Case:—The pauper was born in Offchurch in 1765, and resided there with his father until 1770. On his father's leaving Offchurch, the pauper was left with one Leeson, at Offchurch, to be taken care of, his father paying for his lodging and board. The pauper continued at Leeson's at Offchurch for two years, and then went to reside with his uncle, who also lived at Offchurch, and continued to reside with him about two years, during which his uncle provided him with board, clothes, lodging, and pocket-money, and he worked with his uncle, but received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at Ladbroke, and stayed there a week; and then went to reside with another uncle, Salmon of Weston, with whom he lived six years as he had done at his uncle Haddon's. Salmon provided him with board, clothes, lodging, and pocket-money, he working for Salmon without having been hired as a servant or receiving any wages. On leaving Salmon, he went and lived three weeks with his father at Ladbroke, where his father had obtained a settlement. The pauper had never done any act to gain a settlement. Lord Kenyon, C. J. "This is the weakest case of eman-

3. Of Emancipation.

A son was apprenticed to a certificated person for four years, and after serving the time, returned to his father at the age of nineteen: Held not emancipated.

Child under age, residing away from his father with relations, who maintain him, and for whom he works without being hired, is not emancipated.

3. *Of Emancipation.*

cipation that ever was attempted to be made out. When the father left Offchurch, the son was only five years old; now it cannot be pretended at that time he was emancipated, and yet he then ceased to reside in his father's family. Ordinarily speaking, one of these things must happen before the son can be said to be emancipated: either he must have obtained a settlement for himself, or have become the head of a family, or at most he must have arrived at that age when he may set up in the world for himself. But here the son does not fall within either of those descriptions: no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle Haddon, he was only eight years old at the most; and he could gain no settlement either by living with that uncle or his other uncle Salmon as a servant, because the case states that he was not hired as a servant by either of them. Now during all this time the father had a right to the custody of the son, and might have obtained him by *habeas corpus*, for the parental care was not then done away. It is not necessary in these cases of derivative settlements, that the child should remove with the father from place to place, for the settlement of the father will be communicated to the child: otherwise children who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement; and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement. How long the power of communicating a derivative settlement may continue it is not necessary to determine; for in this case it certainly remained longer than till the child was nine or ten years old, and that is sufficient for the determination of this question." Both orders quashed.

A child is not emancipated till he has gained a settlement in his own right, or has contracted a relation inconsistent with the idea of his being part of his father's family; and a person at the age of nineteen (his father having run away), hiring himself for four years, but not gaining a settlement thereby, is not emancipated.

Rex v. Witton-cum-Twambrookes, 3 T. R. 355. G. Hewitt and his wife and family were removed from Stockport to Witton-cum-Twambrookes. Order confirmed. Case:—The pauper's father, J. Hewitt, rented a tenement of 16*l.* a-year in Witton, and resided upon it above a year, when the pauper was about six years old. The father then went to Middlewich, where he did no act to gain a settlement; and about two years after ran away from his family; and the pauper's mother, taking the pauper with her to Congleton, died in half a year; the pauper was there left in the care of Jane Brookes, with whom he lived at Congleton, and worked at the silk mills there. The overseers of Witton paid for his maintenance for four years to J. Brookes, after which the pauper supported himself to the age of sixteen, at which time he got 3*s.* 9*d.* per week, and boarded himself where he liked. During the first part of the time he lived at Congleton he saw his father twice, at the distance of about four years, at which time his father did not give him any thing (except a pair of breeches, and 2½*d.* the first, and 1½*d.* in money the second time). At eighteen or nineteen years of age, the pauper went from Congleton to Sheffield, and hired himself for four years, but gained no settlement. He heard that his father had been to inquire after him at Congleton, and that he then lived at Dunham, to which place he went to see him, and was at that time twenty-three years of age, and married. (a) The father had made the above inquiry of the pauper's sister, with intent, as he said, to give him a suit of clothes, as he had done less for him than any of his other children. The father married a second wife, and held a tenement in Dunham of 11*l.* a-year, and he had lived upon it eight years, when his son went to see him there, upon which visit he stayed only one hour, and never saw his father but as above. Lord *Kenyon*, C. J. said "It was never conceived in any case that a son who was only sixteen years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being twenty-one (*Rex v. Roach*, *post*, 305), or married, or having gained a settlement in his own right, or (as in the case of the soldier), having contracted a relation which was inconsistent with the

(a) The pauper in this case was absent from his father's family when he came of age. This would be emancipation. (See *Rex v. Lawford post.*)

idea of his being in a subordinate situation in his father's family." Order confirmed.

Rex v. Edgeworth, 3 T. R. 353. H. Rothwell and family were removed from Castleton to Edgeworth. Order confirmed. Case:—H. Rothwell, the father of the pauper, when the pauper was about thirteen or fourteen years old, came to live upon a tenement at Edgeworth of 5*l.* a-year, and resided there about two years; during which time he put out the pauper to J. Pollit, who then resided in Spotland, for four years, to learn the trade of a woolcomber. (a) The pauper accordingly left his father's house, to which he never afterwards returned but as a guest, and resided with and worked for Pollit, at Spotland, for four years, and by him was provided all that time with meat and clothes, and was considered by his mother as part of Pollit's family. During these four years the pauper was sometimes a quarter or half a year without seeing his father or mother, but sometimes came to his father's house on a Saturday evening, and returned home to his master's either on the Sunday evening or Monday morning following. After the expiration of the four years he never returned to his father's family, but worked at his trade of a woolcomber at different places about the country, and supported himself thereby until he married, and resided with his wife and family in a house of his own. After the pauper was put out to Pollit, and before the four years expired, Henry, the father, took another tenement in Edgeworth, of the yearly value of 8*l.*, which he occupied with the former tenement for a year, whereby he gained a settlement at Edgeworth. The pauper never gained any settlement for himself; he had been put out *apprentice by indenture*, which was void for want of the stamp denoting the payment of the additional duty. The court (without argument) confirmed the order.

3. Of Emancipation.

A child bound apprentice by and serving under a void indenture, is not thereby emancipated.

Rex v. Wilmington, 5 B. & Ald. 525; 1 D. & R. 140. The order of removal of J. Moore from Crayford to Wilmington was confirmed. Case:—The pauper in 1814 was removed with his father to Wilmington. The pauper in the same year returned with his father into Crayford, and was hired by the week to Sir H. Crewe in that parish, in whose service he continued as a weekly servant for nearly two years. Upon leaving Sir H. he followed the occupation of mole-catching in Crayford, by which he obtained his own living. He never resided with his father's family, nor did his father exercise any control over him. In 1815, when the pauper was about seventeen, his father left Crayford, and went to live at Poplar, and about February, 1817, went to Bow, where he rented a house and orchard at 20*l.* per annum, and in which he still continues to reside. Whilst the pauper followed the business of mole-catching in Crayford, he used occasionally to visit his father both at Poplar and at Bow, and once slept at the father's house in Poplar, but he did not receive any maintenance or assistance from his father. After the father had occupied the house at Bow for rather more than a year, the pauper, who was then about nineteen years of age, married. The question was whether the pauper before his marriage was emancipated. *Abbott, C. J.* "It is of importance to lay down some general rule for the guidance of magistrates on the subject of emancipation; and the best which I can suggest is this, that during the minority of a child there can be no emancipation, unless he marries, and so becomes himself the head of a family, or contract some other relation, so as wholly and permanently to exclude the parental control. I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be however no question that in that case he is only removable to his own acquired settlement. Here the pauper was under twenty-one, and had neither married nor contracted any such relation as I have described, at the time when his father acquired the settlement at Bow. He was therefore not emancipated, and the order of sessions must be quashed."

Emancipation takes place by becoming head of a family, or contracting some other relation, so as wholly and permanently to exclude the parental control. It seems that the acquiring a settlement of his own does not properly constitute an emancipation.

General rule.

Rex v. Roach, 6 T. R. 247. Order confirmed for the removal of E. R. from St. Columb Major to Roach. Case:—The father of the pauper lived

An adult who removes from her father's house, and goes into service, becomes thereby emancipated.

(a) The indenture was void for want of a stamp.

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General rule.

in Roach, and gained a settlement there, and the pauper lived with him until after she was twenty-one years of age; when she was twenty-two she had a bastard child, for the maintenance of which a bond of indemnity was given to Roach, and she continued still living with her father. About half a year after, she left her father's house, and went to Mr. Henwood's in Roach, as a wet nurse, and lived there eight weeks, for which she was paid 8s. A few days after she left her father's house, the father removed to St. Columb, where he rented some mills at 12*l.* a-year, and has lived there from that time; at the end of the eight weeks the pauper returned to her father in St. Columb, where she has since remained, but made no contract with him as a servant, nor gained any settlement for herself except as aforesaid. Lord Kenyon, C. J. "It has been very properly observed on former occasions, that this court ought to be anxious, in determining questions arising on the settlement laws, to lay down clear and distinct rules for the information of a very useful class of persons, the magistrates, who are to decide in cases of this kind. And I hope that the rule of decision which we are about to establish in this case, will fall in with every case that has been cited. For with regard to a supposed expression of mine in *Rex v. Witton-cum-Twambrookes*, there is an inaccuracy in it. I think I could not have said, because it never was my opinion, that the mere circumstance of a son's attaining the age of twenty-one was an emancipation, so as to prevent his having a derivative settlement, gained by his father afterwards, if the son continued to live with the father; for if the son, with unbroken continuance, remain with and a member of the father's family, he is not emancipated. But this proposition will not break in upon any of the cases, but may be reconciled with all of them, namely, that 'if a child under the age of twenty-one leave his father's home, and is thereby *quâ* severed from his father's family, and return to his father during a state of pupilage, during which time policy requires that the child should be under the protection of his father, he must be considered as incorporated with his father's family, unless he have gained a distinct settlement of his own, or have become the head of a family himself: but if a child, after a state of pupilage, sever himself from his father's family, he cannot afterwards be incorporated with it.' The case of the soldier proceeded upon that principle; he had neither gained a settlement nor was in a situation to gain one, but he had ceased to be under the control of his parents, and had become liable to the control of others; and as he did not return to his father until after he was of age, the case was thought too clear to be argued. But it must not be inferred from the circumstances of that case not having been argued, that it passed without consideration, and is not entitled to much notice; because in *Rex v. Halifax, Aston, J.* who was a very good sessions lawyer, alluded to it as a case properly decided. And if so, it must govern the present, for I cannot distinguish between them. Some stress however has been laid in the argument to-day on the circumstance of that person having engaged in the situation of a soldier; but that cannot be material in any other way than as showing that the son was no longer under the control of his father. So in this case this woman was above twenty-one; she had contracted the relation of servant with another family; she was out of her father's family; she was under no control to him other than that arising from moral obligation and gratitude; and I cannot see how she could afterwards be deemed to be incorporated with the father's family." The court agreed. Order confirmed.

A widower having a daughter, placed her, at eleven years of age, with an uncle, by whom she was wholly maintained, and with whom she continued to reside after she came of age, doing service for him, but

Rex v. Cowhoneyborne, 10 *East*, 88. Removal from Teddington to Cowhoneyborne. Order confirmed. Case:—The pauper being settled in Cowhoneyborne, after the death of his wife went to service, and hired himself to Clarke, of Cowhoneyborne, who afterwards removed to Teddington, and the pauper left him at Michaelmas, 1806, having served him five years under a hiring for a year in Teddington. On the death of the pauper's wife, W. Nightingale, who had married his sister, maintained his infant, out of kindness to the pauper; and the pauper's daughter, Elizabeth, then about eleven years of age, went, with the pauper's consent, to Nightingale, to nurse her infant sister. The infant died in about a year; and from that time to this

Elizabeth continued to live in the house of Nightingale as one of the family, but doing the work of a servant. Nightingale, previous to the pauper's daughter living with him, kept a servant, and would have hired one if she had left him; but he never hired her, or paid her any wages, though he found her in board, clothes, and such pocket-money as he thought fit. Elizabeth will be twenty-seven years of age in June, 1808. During the time she so lived with Nightingale she considered herself liable to be sent away whenever he pleased; and he considered her at liberty to quit him when she chose; and the pauper considered himself, as her father, bound to receive and support her if Nightingale ceased so to do. But the pauper was not a house-keeper at any time after he went into Clarke's service. The question was, whether Elizabeth was so emancipated as to enable the pauper (her father) to gain a settlement by his hiring and service with Clarke in Teddington. Lord *Ellenborough*, C. J. "The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age, as part of his family, receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the statute of Will. III. gained a settlement by the subsequent hiring and service for a year in Teddington, as 'an unmarried person, not having any child.'" *Grose*, J. "The daughter lived apart from her father, after she was twenty-one, not under his control, nor having any contemplation of it, nor receiving any assistance from him; she was therefore emancipated when her father was hired for a year, and served in Teddington." *Le Blanc*, J. "Under these circumstances, living away from her father before and after the age of twenty-one, he having no house of his own, nor giving her any support; I think she ceased, after she came of age, to be part of her father's family, and consequently no future settlement gained by him could be communicated to her; and if so, he gained a settlement by the hiring and service in Teddington." *Bayley*, J. "To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: *Rex v. Roach* is in point to that. Where is the difference between going out from the father's house after twenty-one to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here: the father too during all that time having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home." Orders quashed.

Rex v. Oulton, 5 Bar. & Adol. 958; 3 Nev. & M. 62, S. C. Hannah Barnes was removed from Arkton to Oulton. Order confirmed. Case:—John Barnes, the father of the pauper, had a settlement in Oulton until 1830, when he acquired a settlement in Arkton, the pauper at that time living with him as part of his family. The pauper was born in 1806, and had never gained any settlement in her own right, but up to the time of the removal lived with her father as part of his family. She did the work of her father's house, and before and at the time of the appeal was the main support of his family. In the autumn of 1829, the pauper then being of the age of twenty-three years, with the consent and at the desire of her father, hired herself to William Wilson, residing at some miles distance, in an adjoining parish, at weekly wages, to work for him during his harvest. She remained living with Wilson and working for him under the hiring for three weeks and upwards, when she received her wages and returned home, having been absent from her father's house three weeks and two days. In the following autumn she hired herself again, with the consent and at the desire of her father, to Wilson, to assist him in his harvest. On this occasion she served Wilson, living with him under this hiring a fortnight, received her wages, and returned home as before, having been absent from her father's

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without any contract of hiring, to give her a settlement of her own; the father in the mean time having gone out to service: Held, that on coming of age she was emancipated.

Hiring by an adult for the harvest is an emancipation.

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The intention of
the child material.

house at this time two weeks and two days. On this latter occasion she gave her wages to her father, who expended them for the use of the family. The pauper had not on either of these occasions any intention of abandoning her home, but on both occasions she fully intended to return, and her father expected that she would return to him as soon as the harvest work at Wilson's was done. The sessions found that the pauper was emancipated, and did not follow the settlement acquired by her father in Arkton in 1830. *Denman, C. J.* "It seems to me that the sessions were right in finding that the daughter was emancipated. It appears that she and her father were on very good terms, and that on one occasion she paid her wages to him; but she being twenty-one years of age, and having hired herself during the harvest, it was in her option to pay her wages to her father or not. *Rex v. Lytchet Matraverse* (1 M. & R. 25; 7 B. & C. 226), tends strongly to show that a pauper who hires himself under twenty-one years of age, and continues to serve after that period, will be emancipated. We are extremely anxious to make the rules on this subject as clear as possible. A party under age is not considered to be emancipated unless some distinct act be shown producing that effect; as if he marries, and so becomes the head of a family; or contracts some other relation, so as wholly and permanently to exclude the parental control; but where a child has attained the age of twenty-one, and is then separated from the father's family, the burden of proof that the child is not thereby emancipated lies on the party asserting that fact." His lordship then read the words of *Abbott, C. J.* in *Rex v. Hardwicke* (*ante*, 303). "Now here the pauper, after she attained twenty-one, made a contract whereby she bound herself to work during a certain period. In performance of that contract she was absent from her father's house three weeks, employed in gaining a livelihood for herself. During that period, consequently, she no longer remained a member of his family; and I am, therefore, of opinion that the sessions were warranted in the conclusion they came to, that she was emancipated." *Littledale, J.* "I am of opinion that the pauper was not emancipated. It appears to me that her temporary absence from her father's house during the harvest was not, under the circumstances stated in this case, a severance from his family, and therefore does not amount to emancipation. It is the common practice for country people to hire themselves during the harvest, and their temporary absence from home under such a hiring, and when they are of full age, has never been considered such a severance from the father's family as amounts to emancipation. In this case the daughter did not intend to separate from her father's family, and her intention is very material in a case like the present, where her absence from the parent was for so short a period. For anything that appears, her room or her bed may have been kept for her during her absence. She maintained her father, and her hiring herself during the harvest may have been intended as a means of making her earn something towards his support. It is said that the pauper is emancipated, because, having contracted to work during the harvest, she had for a time put herself out of her father's control. That argument would equally apply if she had agreed to work by the day, because during the hours of work she would be free from her father's control. There must be a severance of the child from the family of the parent to constitute emancipation. I think that the pauper here, during the harvest time while she was working for another, continued, under the circumstances stated in this case, part of her father's family. In *Rex v. Roach* (6 T. R. 247, *ante*, 305), Lord *Kenyon* said, 'This woman' (the pauper) 'was above the age of twenty-one, she had contracted the relation of servant with another family, she was out of her father's family, she was under no other control to him than that arising from moral obligation and gratitude, and I cannot see how she could afterwards be deemed to be incorporated with the father's family.' In this case the pauper never contracted the relation of household servant with another family, she was to work in the fields, not in the house. She was therefore never out of her father's family, to use Lord *Kenyon's* expression; her wages contributed to his support, she intended to return home, and her father expected she would as soon as the harvest work was done. In *Rex v. Roach*

(6 T. R. 247), *Ashhurst*, J. considered the question, whether absence from the father's family amounted to emancipation, to depend upon the intent. He there says, 'In some cases, perhaps, it may be difficult to say what shall amount to a severance from the father's family. When a child becomes of age it is optional in him either to continue with his parents or not, as he pleases. He is then *sui juris*, and if he leave his father's house and put himself under some other control, this is a kind of public notification that he means to leave his father's family.' Now I think here that the fact of the pauper having left her father's house, and put herself under the control of another during the harvest, was not under the circumstances of the case any indication of an intent to leave her father's family. In *Rex v. Sowerby* (2 East, 276), it was found that the son of the certificated person never left his father or mother's house, except for a few weeks in harvest time in one year, and it was then considered that he was not thereby emancipated." *Taunton*, J. "Certainty in the administration of every department of the law is of the greatest importance, and in none more so than in sessions law. The yearly expense of the country is increased greatly by splitting hairs in questions of this description. I cannot distinguish this case from *Rex v. Roach* (6 T. R. 247). That decision, whether wisely come to or not, is binding on us. It certainly is not in contravention of any leading principles of law, if it were, I might think it right to reconsider it. It is true, that in this case the pauper hired herself at the desire and with the consent of her father, but every parent consents and desires (if his mind be properly constituted) that his children should go to service to obtain an honest livelihood. Here the pauper agreed not merely to do harvest work, but to work for Wilson during his harvest. It is by no means uncommon for farmers to employ their own domestic servants to do the harvest work, and to hire others to do the household work. Whether that was the case here does not appear; but the pauper lived with her master during the whole harvest time, and slept in his house, and she was absent on the first occasion three weeks and two days. And as it is expressly found that on the second occasion she gave her wages to her father, it may be fairly inferred that on the first she kept them for herself. Then the only difference between *Rex v. Roach* (6 T. R. 247), and this case is, that there the pauper served eight weeks, here only three weeks and two days. In each case the pauper served under a contract, and as it was held in the former case that the pauper was emancipated by having been absent from his father's family eight weeks, I think we are bound to adhere to that decision, and to hold that the pauper was emancipated here by her absence for three weeks." *Patteson*, J. "I cannot distinguish this case from *Rex v. Roach*, (6 T. R. 247.) The only difference is, that in that case the pauper served eight weeks, here she served three weeks and two days; but she was bound by her contract, and compellable to serve her master during that period. It is found, indeed, that she hired herself with the consent and at the desire of her father, but he could not enforce or prevent her so doing, for she was of full age, and that being the case the onus of showing that she was not emancipated is thrown on that party who contends that she was not so. As to *Rex v. Sowerby* (2 East, 276), the decision there did not turn on the question of the emancipation of the son; he was born after the father had come into the certificated parish, and always resided with him during his lifetime, and after his death with his mother; and the question was, whether or not after that time he still resided under the certificate by living with his mother as part of a family of which she was the head, in which case his hired servant was prevented by the statute 12 Anne, c. 18, s. 2, from gaining a settlement." Order of sessions confirmed.

Rex v. Morley, 2 M. & Sel. 417. Removal from Armley to Morley. Order confirmed. Case:—The pauper's father resided in Armley under a certificate from Morley, dated 1st June, 1761, acknowledging him, his wife, and three children, not the pauper, to be settled in Morley. The pauper, when about twelve years old, (his father being then lately dead, and he residing with his mother in Armley under the certificate, as part of his late father's family,) was bound apprentice by the overseers of Morley to one

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The son of a certificated person, not named in the certificate, upon the death of his father, was bound apprentice in the certifying parish, where he served for some years,

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and then, with his master's consent, served the remainder of his time, till twenty-one, with a person in the certified parish, where his mother and family resided under the certificate; and afterwards he hired himself to the same person for a year, and served that and three successive years in the certified parish: Held, that he gained a settlement by such hiring and service.

Lister, of Morley, till twenty-one. He served in Morley under the indentures seven years, and then with his master's consent returned to Armley, where his mother and family then resided under the certificate, and still reside, to serve one Gaunt, in Armley. The pauper continued in Gaunt's service till the expiration of his indentures. He was then hired by Gaunt for a year, and served a year, and remained with Gaunt four years in the whole, living with him in Armley during all that time. Upon the pauper's going to Armley to serve out the remainder of his apprenticeship with Gaunt, he did not go to his mother's house, nor at any time, during the rest of his apprenticeship, resided at his mother's as part of her family. The question made was, whether the pauper gained a settlement in Armley by hiring and service with Gaunt? Lord *Ellenborough*, C. J. after observing on the effect of the certificate, said, "that brings it to the question whether he was a part of his father's family. In the case of *Collingbourne Ducis*, the pauper, after leaving his father's family, returned to the parish where his father was living under the certificate, being under age, and was hired in the certified parish, at which time he continued a part of his father's family. So in *Rex v. Keel*, the pauper returned to a branch of her family in the certified parish, and was there hired and served whilst under age. *Rex v. Ingworth* is the nearest to the present case; but there is this distinction, that there the pauper returned under age to the father's house, and hired himself whilst under age to a person in the same parish; and although by comparing his age when he first let himself, with the time when he last let himself, it does appear that he must have been of age at the commencement of the second year's service under the last letting, yet that circumstance seems to have escaped the notice both of the counsel and the court; and the case was decided entirely on the authority of *Rex v. Keel*, which it was supposed exactly to resemble, but which, for the above reason, is not so. We do not think, however, that this is an authority to warrant us in deciding that where a child, not named in the certificate, separates himself from his father's family at an age when he is by law capable of supporting himself, he shall either derive a settlement acquired subsequently by his father, or shall be prevented by the certificate from gaining a settlement for himself, which is a disability that can only attach on him as being one of the family. This is illustrated by *Rex v. Roach*, where a daughter, being of age, left her father's family, and hired herself to a farmer for eight weeks; during the time of her absence her father acquired a subsequent settlement, and it was determined that she was not entitled to such subsequent settlement, on the ground that she had ceased to be a part of the father's family, or in the language of the cases, was emancipated. That case was fully argued and considered, and it lays down a rule in precise terms, which may serve to govern others in future. The same point was determined in *Rex v. Cowhoneybourne*. It is true that these latter were cases where the question did not arise upon a certificate; but they establish a principle which shows what it is that constitutes a child a part of his father's family; and whatever divests him of the capacity as one of his father's family in the one case, divests him of the incapacity in the other. We are of opinion, therefore, that the pauper ceased to be a part of his father's family, and by the hiring and service gained a settlement in Armley." Orders quashed. (a)

Where a pauper left his father's family at fifteen, and entered the sea service, where he remained till twenty-one: Held, that he was then emanci-

Rex v. Lawford, 8 B. & C. 271; 2 M. & R. 556. H. Nunn and her children were removed from Lawford to St. Anne's, Limehouse. Order quashed. Case:—J. Nunn, the late husband of the pauper, in 1802, when about fifteen years of age, quitted his parents, and went to sea, where he continued till the period of his marriage, sometimes serving on board a king's cutter, and at other times on board trading vessels, gaining his own living. Up to the age of eighteen, his parents resided at Manningtree, and while

(a) Note. If the pauper is still one of the family, he cannot acquire a settlement in the certificated parish by apprenticeship, unless both the binding and inhabiting take place after his emancipation. *Rex v. Manningtree*, 6 M. & S. 214, post. (See title, "Apprenticeship.")

there, the vessel on board of which their son was serving being stationed on the river near that town, his mother washed for him, and occasional visits were paid by the son to the parents, sometimes of a few days' continuance. During the period from 1805 to 1810, the parents, having quitted Manningtree, removed to St. Anne's, Limehouse, and resided on a tenement of the value of twelve guineas a year; and twice during those five years the son visited them there, and stayed eight or ten days at a time, returning to his ship after each visit. The distance prevented the mother from continuing to wash for the son while she and her husband were resident at St. Anne's; but she occasionally sent him small sums for pocket money. The son attained the age of twenty-one while his parents were residing in St. Anne's Limehouse. In 1810 the parents quitted that parish, and took a tenement of 24*l.* a year at Gravesend, on which they resided when the son married, having been in the occupation of it upwards of a year before such marriage. *Bayley, J.* "It is extremely desirable in cases of this nature to preserve an uniformity of decision, and to act, wherever it is possible, upon broad and general principles, and not to give effect to such nice and subtle distinctions as have been advanced in the argument in support of this order of sessions. It was laid down as the rule, by *Lawrence, J.* in *Rex v. Roach*, that if a child leaves his father's family under twenty-one, and returns while he is under age, he continues to be part of that family, and his settlement will shift with that of his father; but that if the child, when he attains twenty-one, is absent from his father's family, the father thereby loses all control over him, he becomes emancipated, and his settlement will not shift with that of his father, but will continue to be in that parish where the father was settled when the child attained twenty-one. That learned judge there says, 'In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was twenty-one, he would have been considered part of his father's family; or if he had quitted the army before twenty-one, without returning home, the father might have reclaimed him by suing out a *habeas corpus*; but it appears from the case that he had attained the age of twenty-one before he left the army: therefore, during the time that he continued a soldier, his father lost all control over him, he being of age; and the subsequent settlement gained by the father was not communicated to him.' After applying the reasoning in that case to the one before the court, the learned judge adds, 'If, after such a service as this, the daughter had returned to her father before she was of age, she would have continued as part of her father's family; but not returning till after, she can no longer be considered as part of his family.' *Rex v. Cowhoneyborne*, was decided upon the same principle. There, a widower having a daughter placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father in the meantime having gone out to service. It was held, that on her coming of age she was emancipated. There, at the time she became twenty-one, she continued absent from her father's family. The same doctrine was laid down in *Rex v. Hardwicke*, the only distinction between that and the former cases being that the original separation of the child from his father's family was not voluntary; he having been drawn for the militia while he was under age, and served in it until he was twenty-three years of age. That distinction, however, does not vary the question of emancipation; and the principle deducible from that latter case is, that a child is not part of his father's family while he remains subject to a control paramount to that of his father; and that if, while under age, he contract a relation inconsistent with the parental control, which relation continues until after he attains twenty-one, the authority of the father thereby wholly ceases, and he can no longer insist upon the child's returning into his family, and the child is emancipated. In this case, when the pauper's husband attained twenty-one, his father's settlement was at Limehouse, and he was absent from his father's family, in a service, in which he voluntarily continued after he was twenty-one. The consequence was, that he then became emanci-

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pated, and was settled in the parish where his father was then settled.

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If a son at sixteen hire himself for a year, and serve that year, the emancipation commences from the termination of the service.

A pauper, under age, hired himself to serve on board a ship trading to Newfoundland. While he was so serving, and before he attained twenty-one his father acquired a new settlement. After he had attained the age of twenty one, the pauper returned to his father's house: Held, that the pauper was not emancipated when his father acquired the new settlement, and that his settlement shifted with that of his father.

pated, and that his settlement continued at Limehouse, though his father's had been transferred to Gravesend." The order of sessions must be quashed.

Rex v. New Forest, 5 T. R. 478. On old Martinmas-day, 1777, E. Coates hired himself for a year to G. Bowe of New Forest, and served that year: on the 22d December, 1777, E. Coates married his present wife: William Coates, a legitimate son of his by a former wife, being within one month of the age of sixteen years, and having gained no settlement in his own right, on the same Martinmas-day, 1777, hired himself for a year to R. Nelson of Ellerton, which he served. The question was, whether, by reason of the service and settlement thereby gained by the son under his hiring, the father could be considered as being an unmarried man, by the emancipation (which, it was contended, was by relation at that moment complete,) of his son? Lord *Kenyon*, C. J., (after reciting the 3 W. & M. c. 11, s. 6,) said, "That in this case the son was not separated from the father; when the father was hired, the son had gained no settlement for himself; he indeed did on the same day enter into a contract which might or might not have been completed, and which, when completed, would confer a settlement on the son; but at the time when the father entered into the relation of servant at New Forest, the son formed a part of his family."

Rex v. Lytchet Matravers, 7 B. & C. 226; 1 M. & R. 25. Isaac Orchard and his wife were removed from Lytchet Matravers, Dorset, to St. James, Poole. Order quashed. Case:—The father of the pauper was settled in Lytchet Matravers, and while he was so settled, the pauper hired himself to serve for two summers and a winter on board a ship trading to Newfoundland. In February or March, 1816, being then twenty years of age, he entered upon that service, during which he continued during the stipulated time. There was no evidence that his father ever exercised any control over him during his service. He attained the age of twenty-one years before his return from the voyage. Shortly after he had left this country, and before he had attained the age of twenty-one years, his father acquired a settlement in St. James, Poole. On the pauper's return from Newfoundland, he went to reside in his father's house, who, before that time, had left Poole, and returned to Lytchet. After a few weeks he left his father's residence, and lived with his sister, working on his own account as well there as during his residence with his father. The sessions were of opinion that the pauper was emancipated at the time when his father acquired the settlement in Poole. *Bayley*, J. "The question in this case is, whether at the time when the father had gained a settlement in St. James, Poole, the pauper was emancipated? There can be no doubt that the settlement of a son, if he have none of his own, shifts with that of the parent, so long as the son continues part of the parent's family. When he ceases to constitute part of the parent's family, he is emancipated. The different instances of emancipation put by Lord *Kenyon* in *Rex v. Offchurch*, and *Rex v. Witton cum Twambrookes*, and recognized by Lord *Ellenborough* in *Rex v. Uckfield*, are the child's attaining its full age, or being married, or gaining a settlement, or, as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. In *Rex v. Roach*, Lord *Kenyon* qualified what he was reported to have said as to a son's being emancipated on attaining the age of twenty-one years, by limiting that observation to cases where the son at that age was severed from his father's family; and then adverting to the case of the soldier, he observes that the soldier had ceased to be under the control of his parents, and had become subject to the control of others; and that as he did not return to the father until after he was of age, the case was thought too clear for argument. It is insisted that this case falls within the fourth class of cases mentioned by Lord *Kenyon*, and that the pauper, as soon as he entered into the contract, like the soldier who had enlisted, was emancipated, because he had subjected himself to the control of others, and continued so subject until he had attained twenty-one. But there is this distinction between the case of the soldier and the present: the soldier, by enlisting, became subject to an authority paramount to that of his parent; here the pauper, by contracting to

serve the owner or the captain of the ship, subjected himself to an authority not paramount but subordinate to that of his parent; for, by the law of England, the parental authority continues until the son attains the age of twenty-one. This distinction is pointed out by *Holroyd* and *Best, Js.*, in *Rex v. Rotherfield Greys*; the latter there says, 'by the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years; but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue.' *Lawrence, J.*, in *Rex v. Roach*, seems to take the same view of the subject, and to consider the authority of the state paramount to that of the parents, so long as the minor continues in the public service; but as soon as he leaves it, then the parental authority is restored. He there says, 'In the case of the soldier the son was enlisted when he was under age, and if he had returned home before he was twenty-one he would have been considered as part of his father's family; or if he had quitted the army before twenty-one without returning home, the father might have reclaimed him by suing out a *habeas corpus*.' *Blackstone*, in his Commentaries, vol. 1, p. 453, says, 'The legal power of a father over the persons of his children ceases at the age of twenty-one, for they are then enfranchised by arriving at the years of discretion, or that point which the law has established, when the empire of the father or other guardian gives place to the empire of reason. Yet, till after that age arrive, the empire of the father continues even after his death; for he may, by his will, appoint a guardian to his children. He may also delegate part of his parental authority during his life to the tutor or schoolmaster of his child, who is then in *loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.' It appears then that in ordinary cases the authority of a father over his child continues until the age of twenty-one; but the case of a soldier is an exemption from the general rule. For an infant may by law enlist, and become bound to serve the state; and if he does contract to serve, and the state adopt him as their servant, that adoption severs him from his father's family, and he then becomes subject to the paramount control of the state. In *Rex v. Woburn* the son enlisted at the age of sixteen into the same regiment of militia in which his father served, and lived with him to the age of twenty-three. Lord *Kenyon* thought as he lived in his father's family, the parent's control was not altogether destroyed, the guidance and direction of the child to a certain extent not being inconsistent with the occasional military situation in which he was. He seems to have thought that such a person might be subject to a double control. So in this case, if the father did not interfere, the son might be subject to the control of his master whom he had contracted to serve; but being part of his father's family, and subject to his paramount authority, the latter might have claimed his services at any time before he attained the age of twenty-one years. But in the case of a minor who enters into the army, the state will be entitled to his services, and against the public the father cannot claim them. Considering the principle upon which a minor who enlists as a soldier becomes emancipated to be that he thereby contracts a relation inconsistent with a subordinate situation in his father's family; and considering that a minor who contracts to serve a subject, thereby makes himself liable to the double control of his father and his master, the authority of the parent being paramount to that of the master, I think that the pauper, in this case, when he agreed to serve the owner or captain of a ship, did not contract any relation inconsistent with a subordinate situation in his father's family; but that until he attained twenty-one, he continued part of his father's family, and subject to his paramount authority. Consequently, the sessions were wrong in holding that the pauper was emancipated, and his settlement shifted with that of his father." Order of sessions quashed.

4. *Of Settlement by Marriage.*

The effect of marriage upon settlements.

Residence with a husband in the place where he is settled, is not necessary to give the wife his settlement. (a)

A wife cannot gain a separate and distinct settlement during coverture.

Nor complete the imperfect settlement of the husband.

Though the marriage be fraudulently obtained, the wife will take the husband's settlement. (b)

So also where a widow was married in her maiden name, but without fraud.

IV. *Of Settlements by Marriage.*

If a woman marry a man who hath a known settlement she acquires the husband's settlement; and she takes every subsequent settlement which he may obtain until his death; but if the husband has no settlement, then the prior settlement of the wife continues.

St. Giles v. Eversley, 2 Sess. Ca. 116; 2 Bott, 103. The objection to the removal of the wife and children to the husband's settlement was, that she could not take the benefit of her husband's right of settlement after his death, as she had not taken any advantage of it in his life-time, but had waived it, and fixed in another place; but *Eyre and Fortescue, Js.*, held that the wife and children must be sent to the last legal settlement of the husband and father; and they confirmed the order.

In *Rex v. Aythorp Rooding*, 2 Bott, 104, the wife, after the husband had deserted her, went with her children from White Rooding, and lived upon a copyhold tenement of her husband's forty days without him, in Aythorp Rooding. Before the forty days expired the parish officers gave her notice to remove out of the parish; and as she refused to depart, the justices removed her from thence to White Rooding as a person likely to become chargeable. The court were unanimously of opinion, that although the wife could not gain a settlement by thus residing forty days upon her husband's estate, yet at the same time that she was irremovable from the property of her husband upon being only likely to become chargeable. And even if she go and reside upon an estate devised to her after her husband has deserted her, she cannot thereby gain a settlement for herself. Lord Hardwicke, C. J., said, "There never was an instance where the wife was held to acquire a settlement during the life of her husband. A *feme covert* cannot, by residence, gain a settlement for her husband." (*Berkhampstead v. St. Mary, Northchurch*, 2 Bott, 32; 1 Nol. P. L. 291.)

If the husband is in the progress of acquiring a settlement, by renting a tenement for a year, and he dies a few days before it is completed, the widow cannot, by continuing to reside and paying the year's rent, perfect the settlement for herself and children, as she was not the person who hired the tenement. (*Rex v. Crayford*, 6 B. & C. 68; 9 D. & R. 80.)

In *Rex v. Birmingham*, 8 B. & C. 29; 1 M. & R. Mag. Ca. 408. The pauper, L. S., was married to E. S. when he was a minor, by licence, and without the consent of his father. The appellants offered to prove that the marriage of the pauper was effected by a fraudulent contrivance and conspiracy of the overseers of Little Packington, for the purpose of changing the settlement of the pauper from Little Packington to Birmingham, where the husband was settled; but the sessions refused to receive this evidence, and confirmed the order. Lord Tenterden, C. J., "It is difficult to say, that if the marriage is valid in other respects it could be invalidated by the fraud of other parties, and thus cause a separation of the husband from the wife." *Contra*, it was urged, that Mr. Nolan cites Dalton to show that no settlement brought about by fraud should be considered valid. Lord Tenterden, C. J., "Does the rule go further than this, that the court will prevent a fraud from having its effect when that can be done without violating some higher and more important rule?" Bayley, J., "Mr. Nolan treats the case of marriage as an exception from the general rule."

A woman, on the death of her husband, resumed her maiden name, and after several years was again married by banns in that name, describing herself as a widow; it was held, that in the absence of fraud such marriage was

(a) A contrary doctrine had been held in *Upottery v. Dunkwell*, S. & R. 89; 2 Bott, 102.

(b) An information will be granted against the overseers for procuring the marriage of an idiot woman, or of a

woman pregnant with a bastard, with a view to change her settlement. (*Rex v. Watson*, 1 Wils. 41; *Rex v. Tanant*, 4 Burr. 2106; *Rex v. Edwards*, 8 Mod. 321.)

legal, and that her settlement followed that of her second husband. (*Rex v. St. Faith's, Newton*, 3 D. & R. 348.)

St. Giles's v. St. Margaret's, 1 Sess. Ca. 97; 2 Bott, 107. A woman marries an Irishman, and her husband dies. The court: "She must be sent to the place of her settlement before marriage."

Rex v. Chiddingstone, 1 Stra. 683. A single woman was married to a man who was since dead, but his settlement did not appear. The court: "Her settlement before marriage stands." S. P. *Uphottery v. Dunkswell*, 2 Bott, 108; 1 Sess. Cas. 80; *Sett. & Rem.* 89.

St. John's, Wapping, and *St. Botolph's, Bishopsgate*, Burr. S. C. 367; 2 Bott, 109. E. Kinley married T. Kinley, an Irishman, who had no settlement in England. About two years ago, the husband entered on board a man of war bound for the West Indies, but E. about two months ago heard he was living: and the question was, whether her settlement which she had before marriage ceased, or was in suspense, during the coverture. *Cur. ad. vult.* *Ryder, C. J.* "1. It is certain *St. Botolph's* was once her settlement. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one." To the second point he said, "a settlement is a permanent thing; it lasts during life, or till a new one is acquired; and there is no case where a settlement ceases by any other method; a man cannot give away, or release, or suspend his settlement, for the public is concerned as well as himself. The question is not, whether she gained any new settlement by marriage, but whether her old settlement were discontinued by her marriage with a person who had none? It is absurd to say she shall lose her own without getting another. The objection that the husband and wife would be separated is of no weight here, for they are separated already; for he has left her: I must own the case of *Stretford v. Norton* (a) is not to be distinguished from the present, and is against our present opinion: to be sure we must have great regard to former resolutions in this court, but we must judge upon the case before us. How that case came to be determined so I do not know; but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains, having never been determined, but only, as it

4. Of Settlement by Marriage.

Husband dead and his place of settlement not known, the wife's maiden settlement remains.

If a woman who has a settlement marries a man who has none, and is deserted by him, she may be removed to her maiden settlement.

(a) In *Stretford v. Norton*, Andr. 307; 19 Vin. Abr. 376; Burr. S. C. 122. An Englishwoman married an Irishman who had no settlement in England. He ran away; his wife was removed to her maiden settlement. *Lee, C. J.* "It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband have or have not a settlement; for otherwise the justices might separate husband and wife; and therefore, to make the order good, it should have appeared that the man was dead." In *Hanway v. Marston*, T. 1 Geo. I. the Ch. J. said, "that the settlement of a woman who marries a vagrant is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because a husband and wife being as it were but one person cannot be parted." (*Shadwell v. St. John's, Wapping*, T. 9 Geo. I.) One Ridley, a vagrant, having no settlement, married a woman who had a settlement in *St. John's, Wapping*, and

had four children by her, born in *Stepney*. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband.

This last case is that which is said by *Sir James Burrow* (Burr. S. C. 124), to have been turned into a catch, in which form alone he had been able to meet with it. The metrical report is as follows:

A woman having a settlement
Married a man with none:
The question was, He being dead,
If that she had was gone?
Quoth *Sir John Pratt**—Her settlement
Suspended did remain,
Living the husband; but, him dead,
It doth revive again.

Chorus of *Puisne Judges*.
Living the husband; but, him dead,
It doth revive again.

* Then Lord Chief Justice.

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The wife may be removed to her maiden settlement, if the husband's be not known :

Husband living, but having no known settlement in England.

Wife of Irishman, &c. removable to Ireland; but if deserted, to her own settlement.

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement.

were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him.

Rex v. Westerham, Fol. 252; 2 Bott, 108. It appeared by the testimony of E. P., that she was at the time of the order a married woman, and that her husband was born in Wiltshire, but in what place he had a settlement she did not know: but he is run away, and still living, for what she knows. By the court: "Whether the husband be living or dead signifies nothing. For unless it appear that he has a settlement, the woman must be sent to the place of her settlement before her marriage: for, supposing the husband was born upon the high seas, or in Ireland, or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved."

Dunsfold v. Wilsborough Green, Fol. 249; 2 Bott, 105. A woman who was settled at Wilsborough married a Scotchman, who had no settlement in England. She was removed to the place of her settlement before marriage. It was urged that as her husband was a Scotchman, they ought to send her, as part of his family, to the bordering counties of Scotland, according to the 39 Eliz. c. 4, s. 6. The court held, though she were a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at Wilsborough as at Dunsfold; and as to the husband, nothing in the order appears as to him, whether in England or not.

It may be expedient here to observe, that by the 59 Geo. III. c. 12, s. 33, the whole family of a Scotchman or an Irishman^(a) must be sent to his country, upon becoming chargeable, but the statute does not authorize the removal of the *wife alone* to the place of her husband's birth. The law, therefore, remains as it stood before that statute, in cases where the husband deserts his wife. In *Rex v. Leeds*, 4 B. & Ald. 498, the husband and wife were living together, and it was held that she must be passed with him to Scotland, and could not be removed to her maiden settlement. But if such husband dies or quits his family, and they become chargeable, the removal must be to the wife's maiden settlement. (*Rex v. Cottingham*, 7 B. & C. 615; 1 M. & R. 439.)

Rex v. Ryton, Cald. 39; 2 Bott, 114. S. Kidson and her child were removed from Winlayton to Ryton. The order stated that S. K., the wife of B. K., a soldier in his majesty's regiment of foot, now in America, and Hannah their daughter, have come to inhabit, &c. S.'s maiden settlement was in Ryton; and her husband was at the time of the order in America, and it was not known whether he were living or dead; his settlement was unknown. Lord Mansfield, C. J. "The sessions say that the evidence laid before them proved that which would make the order of the two justices right; and I think that upon the evidence they did right." The other judges concurred. Both orders affirmed.

S. P. *Rex v. Edisore*, Cald. 371; *Rex v. Woodford*, Cald. 236; 2 Bott, 118. M. P., widow, and her four children, were removed from Woodsford to Wimbourne Minster, in Dorsetshire. Order quashed. Case:—By rule of the sessions in Dorsetshire, on appeals against orders of removal, the appellants begin, and show some settlement of the pauper out of the parish appealing: for this purpose the appellants produced a copy of the register of the birth of the pauper. It was objected that this was not sufficient, but that the settlement of the husband ought to have been shown, and that to identify the pauper it was necessary to prove her marriage. The sessions adjudged that the proof of the birth of the pauper was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case, and quashed the order. It was argued, that the pauper having been removed as a widow, it imported that it was a removal to her late husband's settlement, and that her maiden settlement was nothing to the purpose.

(a) See the cases collected, p. 96 to 100. Removal of paupers to Ireland, Scotland, &c.

But the court said: "It may be the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. It is enough in the first instance: the sessions have done right."

Rex v. Harberton, 13 East, 311. Elizabeth, the wife of Charles Hill, and her daughters by her said husband, were removed from Harberton to Drewsteignton. The respondents proved that in 1806 the pauper married Charles Hill, in Chagford; and from a copy of the registry of the marriage, which was produced, it appeared that he was therein described to be of the parish of Alverdiscott, and Elizabeth was therein described to be of Drewsteignton. They also examined the wife, who proved that the children mentioned in the order were born after the marriage, and also that her husband was with her in Harberton a little after Christmas last, since which time he had left her, and she had not seen him since; that he was not there when she was examined before the justices previous to, nor at the time of her removal, and that she did not know her husband's settlement. The respondents gave no evidence to account for the absence of the husband, or of any further search having been made for him, or inquiry as to his settlement. The appellants produced no witnesses, nor did they offer any evidence of the husband's settlement. The sessions quashed the order. Soon after this case had been opened at the bar, the court said that there could be no doubt but that the evidence offered by the respondents, of the wife's maiden settlement, was *prima facie* sufficient, and that it lay upon the appellants to rebut it, by giving evidence of the husband's settlement in a different parish: but the sessions having decided against the respondents, upon the supposition that they had not used due diligence in endeavouring to procure the attendance of the husband, or in accounting for his absence, or inquiring as to his settlement, without going further into the consideration of the case, this court sent it back to be reheard by the sessions, to give the appellants an opportunity of entering into their own case, and of giving evidence of the husband's settlement; and the description in the copy of the marriage register of the husband, that he was of the parish of Alverdiscott, was considered to be no evidence of his having a settlement there.

Rex v. St. Mary, Beverley, 1 B. & Adol. 201. Harriet, wife of W. Owen, and their children, were removed from St. Martin to St. Mary, in Beverley. Order confirmed. Case:—The maiden settlement of Harriet was in St. Mary's, and both the children were born there. No proof was offered that Owen had gained a settlement in his own right; but on the part of the respondents, Ann Rogers, the mother of Owen, proved that she was the wife of a serjeant in the 30th regiment of foot; that she never heard or knew where his place of settlement was; that about twenty-seven years since, whilst the regiment was on the march, she was suddenly taken in labour upon a baggage waggon; that her son, William Owen (the husband of Harriet Owen), was born in the stable of an inn at Ipswich; that she never was in Ipswich before, nor had she ever been there since; that there were several parishes in Ipswich, but that she did not know in which parish the stable was situate, or to what it belonged; and that, even if she was now in Ipswich, she could not point out the stable or inn where she was confined. No proof was given of any other endeavour having been made on the part of the respondents to ascertain the parish in which William Owen was born. At the time of making the order of removal, William Owen was living with his wife and family in the parish of St. Martin, in Beverley. The husband, William Owen, gave his consent to the removal of his wife and family to the parish of St. Mary, in Beverley, but no proof was given of any consent on the part of Harriet Owen to her removal. The question for the opinion of the court was whether, under the circumstances, Harriet Owen and her children could be legally removed to the place of her maiden settlement.

Bayley, J. now delivered the judgment of the court. "We are of opinion that both the orders in this case ought to be quashed. To justify the confirmation of an order of removal, it ought to appear upon the evidence adduced by the respondents that the party removed is settled in the parish to which the removal is made; if that do not appear, and *à fortiori* if the

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Primâ facie evidence of a settlement in the appellant parish is sufficient to call for an answer.

4. *Of Settlement by Marriage.*

contrary appear, the removal cannot be supported. Now the evidence in this case does not prove that the person removed is settled in the parish of St. Mary, to which she is removed, but in one of the parishes in Ipswich. It is argued, however, that as the respondents' witness did not know in which of the parishes in Ipswich the settlement was, and had proved a maiden settlement in the appellant parish, in the wife who was removed, the *onus* of proving in which of the parishes in Ipswich the husband was born was upon the appellant parish; and that in the absence of such proof, a removal to the wife's maiden settlement was warrantable. We do not concur in this reasoning. Where the respondents' evidence makes out a maiden settlement, and contains nothing to show that any subsequent settlement which would supersede the maiden settlement has been gained, that constitutes a *prima facie* case, and the *onus* of proof that the pauper was not settled there lies upon the appellants, but not that of proving the precise place where the pauper was settled. It is enough to disprove by clear evidence the obligation of the appellant parish to maintain the pauper; and the question may be considered for this purpose, as being in substance the same as if there were an issue to be tried between the two parishes whether the pauper was settled in the parish of St. Mary or not. None of the cases cited in argument go any thing like the length for which the respondents must contend. In *Rex v. Woodford* there was no proof of any settlement but the maiden settlement of the wife. The same was the case in *Rex v. Harberton*. In *Rex v. Hensingham* there was indeed proof that the husband had told his wife that he was born in Yorkshire, but what a man says as to the place of his birth is not receivable in evidence to prove it; and a similar observation applies to the case of *Rex v. Westerham*, of which there is a note in *Burn's Justice*, tit. *Poor*, ante, 316. The only remaining case cited by the respondents was that of *Rex v. Eltham*, where the husband was a Scotchman, and had no settlement of his own. I am not aware of any other case in favour of the respondents. Now what do these cases prove? They prove at the utmost, that where there is no sufficient evidence of any settlement in the husband, and where the only settlement as to which there is any is the wife's maiden settlement, the wife may be removed to that settlement; but they do not bear upon the point where it appears upon the evidence that there is a settlement in the husband. Upon the ground, therefore, that in this it appears upon the respondents' evidence that the husband has a settlement in a parish at Ipswich, we are of opinion that a removal to the wife's maiden settlement cannot be supported, and that the order of sessions ought to be quashed." Order of sessions quashed.

EVIDENCE OF SETTLEMENT BY MARRIAGE.

The most usual evidence of the marriage is, by a person who was present, (and either husband or wife is a competent witness for this purpose,) and the production of the parish register, with proof of the identity of the parties.

A marriage may be proved by reputation, as that the parties cohabited together, and were received by relations and friends as man and wife.

Morris v. Miller, 4 Burr. 2057. In all cases but of prosecution for bigamy and actions of crim. con. reputation is good proof of marriage.

A marriage is presumed to have been celebrated with the formalities necessary to its validity till the contrary be shown; and it is not necessary to prove that the minister was in orders, or to prove any of the proceedings preliminary to the actual solemnization of the marriage. (*St. Devereux v. Much Dewchurch*, 1 Bla. R. 367. See *Stark. Ev.* 932.)

The 3 Geo. IV. c. 75, s. 19, enacts, "That after the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of any such affidavit, nor shall any evidence be received to prove that such affidavit was not made and delivered as required by this act, in any suit touching the validity of such marriage; nor shall such marriage be avoided for want of or by reason of any defect in any such affidavit, or on account of the true name or names of either party not

After solemnization under banns, proof of affidavit made not necessary.

being used in the publication of such banns, or for such name or names not having been affixed as aforesaid; but it shall be lawful in support of such marriage to give evidence that the persons who are actually married by the names specified in such publication of banns were so married, and such marriage shall be deemed good and valid to all intents and purposes, notwithstanding false names or a false name, assumed by both or either of the said parties in the publication of such banns, or at the time of the solemnization of such marriage."

But after proof of an actual marriage, it may be shown that the solemnities required by statute, and without which the marriage would be void, have not been observed. (*Standen v. Standen*, *Peake's Rep.* 32.)

The first statute requiring the observance of particular forms, was the 26 Geo. II. c. 33, the 11th section of which was repealed by 3 Geo. IV. c. 75. That section enacted, that marriages by banns, without consent of parents, should be void. The 3 Geo. IV. c. 76, contained a retrospective clause legalizing marriages in such cases. As to the then state of the law, Lord *Tenterden* has observed, "The 4 Geo. IV. c. 17, repeals the 3 Geo. IV. c. 75, except as to things done under its provisions, and except so far as it repealed any former act, or any clause, matter, or thing therein contained. The retrospective clause in 3 Geo. IV. c. 75, did operate, with respect to the particular marriages to which it applied, as a repeal of the clauses in 26 Geo. II. c. 33, which rendered them invalid; it therefore was not repealed by the subsequent statutes, and the marriage of an illegitimate minor is perfectly good, even if by license; if by banns it was so before 3 Geo. IV. c. 75." (*Rose v. Blakemore*, *E.*, 7 Geo. IV. *Ryan & Moody*, 382.) The 4 Geo. IV. c. 17, and 26 Geo. II., were altogether repealed by the following statute.

By stat. 4 Geo. IV. c. 76, s. 8, "No minister, &c. solemnizing marriage between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punished by ecclesiastical censures for so doing, without consent of parents or guardians required by law, unless such minister, &c., shall have notice of their dissent: and if such parents or guardians shall publicly declare, or cause to be declared, in the church or chapel where and at the time the banns are so published their dissent to such marriage, such publication of banns shall be absolutely void."

Sect. 21, "If any person shall solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, unless by special license, or shall solemnize matrimony without due publication of banns, or at any other time than between eight and twelve in the forenoon, unless license be first obtained from some person having authority to grant the same, or if any person falsely pretending to be in holy orders shall solemnize matrimony according to the rites of the church of England; every such offender shall, on conviction, be guilty of felony, and transported for fourteen years; provided, that all prosecutions for such felony shall be commenced within three years after offence committed."

Sect. 22 provided, "That if any person shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns shall be lawfully published, unless by special license as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns or license from a person or persons having authority to grant the same first had and obtained: or shall knowingly and wilfully consent to, or acquiesce in, the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever."

Rex v. Birmingham, 8 B. & C. 29; 2 M. & R. 230; 1 M. & R. Mag. Ca. 408. Luke Smith and Elizabeth his wife were removed from St. Michael and the Holy Trinity, in Coventry, to Birmingham. Order confirmed, subject as respects Elizabeth to a case: Luke was married to Elizabeth in 1826, by license, he then being a minor and his father living, who did not consent to his marriage. It was objected that his marriage was void under the 4 Geo. IV. c. 76, for want of the father's consent. Lord *Tenterden*, C. J.

4. *Evidence of Settlement by Marriage.*

Of dissent of parents, &c. of minors.

Marrying without license or banns, felony in the minister.

Marriage void where persons wilfully marry in any other place than a church, &c.

The marriage of a minor by license, without the consent required by 4 Geo. IV. c. 75, s. 16, is valid.

Evidence of
Settlement
by Marriage.

"We are all of opinion that the marriage in question is valid. A marriage under such circumstances would, by the 26 Geo. II. c. 33, s. 11, have been void, but the 3 Geo. IV. c. 75, s. 1, recites that section, and that it had been productive of great evils and injustice, and then proceeds to enact, 'That so much of the said statute as is hereinbefore recited, as far as the same relates to any marriage to be hereafter solemnized, shall be and the same is hereby repealed.' The second section enacted, 'that marriages theretofore solemnized by license, without such consent as required by the former act, should be valid,' with certain limitations imposed by the third and fourth following sections. Then the eighth and subsequent sections contained the new provisions as to granting licenses in future. These were repealed by the 4 Geo. IV. c. 17, which restored certain parts of the 26 Geo. II. c. 33, and some question might be raised as to whether that part of the 3 Geo. IV. c. 76, remained in force, which repealed the 11th section of the 26 Geo. II. But that question is now rendered immaterial by the 4 Geo. IV. c. 75, which repealed the 4 Geo. IV. c. 17, and so much of the 26 Geo. II. c. 33, as was then in force. The only statute therefore now to be considered, is the 4 Geo. IV. c. 75, the fourteenth section of which points out the mode in which licenses are to be obtained, and the matters to be sworn to by the parties, or one of them; and one of those matters, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, is, that the consent of the person or persons whose consent to such marriage is required under the provisions of this act, has been obtained thereto. Then the sixteenth section specifies the persons who shall have power to consent, and proceeds, 'and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent.' The language of this section is merely to *require* consent; it does not proceed to make the marriage void, if solemnized without consent. Then the twenty-second section declares that certain marriages shall be null and void, and a marriage by license without consent is not specified. Thus far, therefore, the question depends upon the direction in the sixteenth section; and if there were any doubt upon the construction of that section, it would be removed by the twenty-third, which enacts, that 'If any valid marriage, solemnized by license, shall be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under age, by means of falsely swearing to any matter to which such party is required personally to depose,' *not* that the marriage shall be void, but that all the property accruing from the marriage shall be forfeited, and shall be secured for the benefit of the innocent party, or the issue of the marriage. This is a penalty for disobeying the direction of the legislature given in the sixteenth section, and is calculated to prevent fraudulent and clandestine marriages, by depriving the guilty party of the pecuniary benefit, which is most commonly the inducement moving to the fraud. For these reasons it appears to us that the marriage in this case is valid, and the order of sessions right."

Marriage under
age of children,
without consent
of parents.

In *Chilham v. Preston*, 1 *Bla. Rep.* 192. E. Young, Rebecca his wife, and child, were removed from Chilham to Preston. Order confirmed. Case:—E. Young was, in 1758, without the consent of his father, married by license in the parish church of Tenham, to Rebecca, E. Young being then an infant. Afterwards Rebecca was brought to bed in Chilham of the child removed by the order. By Lord Mansfield, C. J. "The marriage act is avowedly made *against* both the contracting parties; and, therefore, they shall not waive the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute." And by the whole court: "Let the orders be quashed as to Rebecca and the child."

Consent to mar-
riage of illegiti-
mate minors
before repeal of
26 Geo. 2, c. 33,
s. 11, by 3 Geo. 4,
c. 75, s. 1. (a)

Before the repeal of 26 Geo. II. c. 33, it was held in *Rex v. Hodnet* (1 *T. R.* 96), that a marriage of illegitimate minors, without consent, was void under sect. 11. (a) In *Horner v. Liddiard* (1 *Hagg. Rep.* 337, 360), Lord

(a) 26 Geo. II. c. 33, s. 11, (repealed after 22nd July, 1822,) provided that marriages by license, where either party,

Stowell held the same point, and that the necessary consent could be only given by a guardian appointed by Chancery; and in *Priestly v. Hughes* (11 *East*, 1), it was decided that the consent of the natural mother to a marriage by license was not sufficient.

"It is part of the law of England, that the law of the country where a marriage is solemnized shall be adopted." *Holroyd, J. (Doe in d. Birt-whistle v. Vardill*, 5 *B. & C.* 438; 8 *D. & R.* 189; *Dalrymple v. Dalrymple*, 2 *Hagg. C. R.* 54; *Ruding v. Smith*, *id.* 371.) (a)

"By the ancient general law of Europe, a contract *per verba de presenti*, or a promise *per verba de futuro cum copulâ*, constitutes a valid marriage. The intervention of a priest was first required by the council of Trent." Lord *Stowell* in *Dalrymple v. Dalrymple*. This general rule prevails in Scotland, but there the intervention of a priest is unnecessary.

It is an undoubted proposition, that a marriage celebrated in Scotland is such a marriage as would entitle the woman to a dower in England. (*Ilderton v. Ilderton*, 2 *Hen. Bla.* 145.)

Marriages by Romish priests, whose orders are acknowledged by the church of England, have been deemed to have the effect of legal marriages in some instances, (at least before the 26 *Geo. II.* *per Lord Ellenborough*, 10 *East*, 288.)

Rex v. Brampton, 10 *East*, 282. Whilst the British army was at St. Domingo, the pauper and a man belonging to that army went to a chapel, in order to be married; and there a service was read in the French language by a person dressed like a priest, and interpreted into the English language by a person who officiated as clerk. The pauper did not understand French, but by the interpreter she understood it was the marriage service of the established church of England read in French. She did not know that the person officiating was a priest. She received a certificate of marriage, which she lost. There was no chaplain with the British forces at that time in St. Domingo. No evidence was given of the laws or usage of the island respecting the marriage ritual there. She and the man lived together as man and wife till his death, and she was removed to his settlement. Order quashed. Lord *Ellenborough*, C. J. "First, considering it as a marriage celebrated in a place where the law of England prevailed; for I may suppose, in the

4. Of Settlement by Marriage.

Marriage in foreign countries.

Marriage in Scotland.

By Romish priests.

Marriage abroad by a French Catholic priest in the French tongue, according to the English rite.

not being a widow or widower, is under twenty-one years of age, had without the previous consent of the father or lawful guardian, or one of them, or if no guardian, then of the mother, if living and unmarried, or if none such then of a guardian appointed by Chancery, shall be null and void.

(a) In that case Lord *Stowell* observes, that "it is not *e converso* established that marriages of British subjects, not good according to the law of the place where celebrated, are universally and under all possible circumstances, to be regarded as invalid in England: the safest course is to be married according to the law of the country, but if this cannot be done, on account of legal or religious difficulties, the law of this country does not say that its subjects shall not marry abroad. And where no difficulties of that insuperable magnitude exist, yet if a contrary practice has been sanctioned by long acquiescence and acceptance of the one country, the courts of this country, I presume, would not incline to shake their validity, upon these large and general theories,

encountered as they are, by numerous exceptions, and the practice of nations." And by 4 *Geo. IV.* c. 91, after reciting "that it is expedient to relieve the minds of all his Majesty's subjects from any doubt concerning the validity of marriages solemnized by a minister of the church of England, in the chapel or house of any British ambassador or minister residing within the country, to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt, concerning the validity of marriages solemnized within the British lines, by any chaplain or officer, officiating under the orders of the commanding officer of a British army serving abroad," it is declared and enacted, "That all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnized within his Majesty's dominions, with a due observance of all form required by law."

4. *Of Settlement by Marriage.*

absence of any evidence to the contrary, that the law of England, ecclesiastical and civil, was recognised by subjects of England in a place occupied by the King's troops, who would impliedly carry that law with them; then, Was it a good marriage before the marriage act? Certainly, before that act, a contract of marriage *per verba de presenti* would have bound the parties; this was such a marriage, and performed by one who publicly assumed the office of a priest, and appeared habited as such; of what persuasion does not appear: but even if it were performed by a Roman Catholic priest, the case would be the same; for such a person would be recognised by our church as a priest capable of officiating as such, upon his mere renunciation of the errors of the church of Rome. But *Rex v. Fielding* shows that a marriage by a Roman Catholic priest (before the marriage act) was effectual for that purpose, which was considered as a contract *per verba de presenti*. In this case the ceremony was performed in a public chapel, instead of in private lodgings, as in *Fielding's case*. Considering, therefore, the case to be that the king's forces carried with them the law of England to St. Domingo, by which they and other subjects who accompanied them (in the absence of proof that any other law was in force there) may be considered as continuing to be governed, this would be a good marriage by that law. But supposing this law of England not to have been carried to St. Domingo by the king's forces, nor obligatory upon them in this particular, let us consider whether the facts stated would not be evidence of a good marriage, according to the law of that country, whatever it might be. And, indeed, after the ceremony of marriage, as it was understood and intended by the parties at the time to be, performed openly in a chapel, by a person appearing there as a priest authorized to perform the ceremony of marriage, and this followed by a cohabitation between the two parties for eleven years afterwards, every presumption is to be raised in favour of its validity. I should have considered myself as safe, in resting my opinion in favour of this marriage upon the law of England, independent of the provisions of the marriage act: but without the aid of that, I think every presumption must be made in favour of its validity, according to the law of the country where it was so celebrated: having been performed there in a proper place, and by a person officiating as one competent to perform that function." The other judges agreed.

Westbrooke v. Stratville, 1 *Stra.* 79. A prior marriage subsisting at the time of a second marriage, renders the second void *ab initio*.

Rex v. Twynning, 2 *B. & Ald.* 386. Mary Burns, the wife of Francis Burns, an Irishman, then absent, was removed from Manchester to Twynning. Order confirmed. Case:—About seven years ago the pauper married R. Winter, with whom she lived a few months, when he enlisted as a soldier, went abroad on foreign service, and has never been heard of since. In a little more than twelve months after her departure, the pauper being settled in Twynning, married Francis Burns, with whom she has ever since cohabited; the children mentioned in the order were born during such cohabitation, and are the children of Francis Burns; but were not born in Twynning. *Bayley, J.*, "Are we to presume that Winter was alive at the time of the second marriage, and the woman guilty of bigamy? If the pauper had been indicted for bigamy, it would clearly not be sufficient. In that case, Winter must have been proved to have been alive at the time of the second marriage. It is contended that his death ought to have been proved; but the answer is, that the presumption of law is, that he was not alive, when the consequence of his being so is, that another person has committed a criminal act. I think, therefore, that the sessions decided right in holding the second marriage to have been valid, unless proof had been given that the first husband was alive at the time."

Rex v. Harborne, 4 *N. & M.* 341. An order for the removal of Ann Smith, the wife of Henry Smith (who had deserted her), from Harborne to

A first subsisting marriage.

To render a second marriage void, the existence of the first husband must be strictly proved.(a)

(a) A parish may be precluded even from this evidence, where, by a certificate, they have recognized the man and woman as husband and wife, *post*.

East Haddon, was quashed. Case:—The respondents proved that Henry Smith, being settled in East Haddon, married the pauper on the 11th of April, 1831, and afterwards deserted her. The appellants then proved that, on the 4th of October, 1821, Henry Smith had married one Elizabeth Meadows; and in order to show that she was alive at the time when he married, the pauper called the father of Elizabeth, who proved that his daughter and Henry Smith continued to live together till 1825, when he left her, and she went into Northampton hospital, that he had since received several letters from her, dated from Van Dieman's Land; and he produced a letter, dated Hobart Town, 17th of March, 1831, which he proved to be in her hand writing. The sessions received the letter in evidence, and quashed the order. The question for the opinion of the court is, whether the sessions were justified in presuming that Elizabeth, the first wife of Henry Smith, was alive at the time of his marriage with the pauper. If so, the order of sessions to be confirmed, otherwise to be quashed. Lord Denman, C. J., "The question is, whether the sessions were justified in coming to the conclusion, that a party who was proved to have been alive on the 17th of March, was alive on the 11th of April. If that conclusion was right, the marriage was invalid. It appears to me that the evidence was properly admitted, and that the sessions have come to a correct conclusion. There was strong evidence to show that the party was alive; and there were no circumstances from which a contrary inference of fact could be drawn. The only matter that raised any doubt in my mind was the doctrine laid down by Bayley, J., in *Rex v. Twynning*. In that case, however, the sessions came to a different conclusion; they did not choose to presume that the first husband was alive at the time of the second marriage of the wife; and the court said, that there was no legal presumption to countervail that finding of fact; but it was totally unnecessary to enter into the question of conflicting presumptions." Lord Tenterden, C. J., and Holroyd, J., did not happen to be present. Bayley, J., seems to have taken up the matter on a principal which certainly was not necessary for the decision of the case. "Here the sessions have said, 'The circumstances are of such a nature, that we will not presume that the wife was not alive.' It appears to me, that nothing could be more absurd, than that there should be a presumption of life or death without reference to the age, circumstances, situation of life, and common habits of the party. Can there be the same presumption as to a party who is 100 and one who is 35? As to a party who was in good health when last heard of, and one who was proved to have then a disorder upon him, which was likely speedily to terminate in his death? It cannot be. It is altogether a question of fact. The only question that can be is, whether the sessions or a jury have competent evidence before them. In *Doe v. Nepean* the question arose much in the same manner. In that case the question was, whether there had been an adverse possession for twenty years, and this depended upon the question, whether a party who went abroad, and was never again heard of, must necessarily be taken to be alive up to the end of seven years after his departure. The learned judge said that the law was so; and he did not leave it to the jury to say whether the party was alive up to that time. When, however, the case came before the court, they held that there was no legal presumption of the continuance of life until the last period. That is perfectly consistent with our decision in the present case. In *Rex v. Twynning* the point arose exactly in the same manner as in this case. The sessions having found one way, the question was, whether there was any legal presumption against that finding. In every case the only question that can arise is, whether the evidence was in its nature admissible; for otherwise, supposing even that it had been proved that the party was alive on the 10th, and that the marriage had taken place on the 11th, you could not presume that the party was alive at the time of the marriage. The sessions were justified in forming their own opinions upon the facts laid before them; and they have given an opinion from which no persons can dissent."

King's Norton v. Northfield, Doug. 659. Abigail, widow of Joseph Jones, was removed from King's Norton to Northfield. Order confirmed. Marriage solemnized in chapels

4. *Of Settlement by Marriage.*

erected since
26 Geo. 2, were
held to be void.

But legalized by
21 Geo. 3, c. 53.

And again, by
44 Geo. 3, c. 77.

Solemnizing mar-
riages in new
chapels.

Bishop, with con-
sent of patron,
and incumbent,
may authorize
publication of
banns in any
public chapel.

Notice to be
placed in such
chapel.

Case:—The pauper, in 1775, married J. Jones, at Buerlyhill chapel, in Kingswinford, which was erected in 1765, and then duly consecrated, and in which divine service had been regularly celebrated ever since; and wherein banns of matrimony had been often published, and marriages celebrated previous to the marriage in question. The chapel was erected since the marriage act, and not erected on the foundation of one that was ancient. No act of parliament was obtained for erecting it, or for celebrating marriages there. The question was, “Whether the marriage was void by the provisions of the said act?” It was contended, that the words *usually published*, in the act, ought to be considered to mean, usually at the time when the marriage in question took place. If so, there was enough stated in the case for the court to consider this as a chapel, in which banns had been usually published. Lord *Mansfield*, C. J., was for some time averse to determine a question of such serious consequence in a collateral way on a settlement case. “But, upon more consideration,” he said, “I think we ought now to decide it. If there has been an abuse, we ought to stop it as early as possible. A delay might lead to a supposition that we doubt, when in truth we do not. The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. [Soon after this determination was known, the 21 Geo. III. c. 53, was passed, for making all marriages which had been solemnized in any parish church, or public chapel, erected since the 26 Geo. II. and consecrated, valid in law, and to exempt the clergyman who had solemnized such marriages from the penalties of that statute.]

By 44 Geo. III. c. 77, it is enacted, that all marriages solemnized, or to be solemnized before 25th March, 1805, in churches, or chapels, erected since the making of 26 Geo. II. c. 33, and consecrated, shall be good and valid in law. And the ministers solemnizing them indemnified from the penalties of the former statute.

By 48 Geo. III. c. 127, the like provisions are enacted with respect to all marriages so solemnized, or to be solemnized, before the 23d of August, 1808. The registers are to be preserved, and to be evidence, as in 26 Geo. II. c. 33.

By 59 Geo. III. c. 134, s. 6, marriages may be solemnized in the chapels of consolidated chapelries, (viz. parts of contiguous parishes and places united into separate districts for ecclesiastical purposes,) which were built by order of the Commissioners for Building New Churches; and by s. 16, the same commissioners may direct whether marriages shall be had, or not, in chapels erected by them in parishes divided into ecclesiastical districts, or district parishes.

By 4 Geo. IV. c. 76, s. 3, “the bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing, under his hand and seal, the publication of banns and the solemnization of marriages in such chapel, for persons residing within such chapelry, or extra-parochial place respectively, and such consent, together with such written authority, shall be registered in the registry of the diocese.”

Sect. 5. Provided, “that in every chapel, in respect of which such authority shall be given as aforesaid, there shall be placed, in some conspicuous part of the interior of such chapel, a notice in the words following: ‘Banns may be published and marriages solemnized in this chapel.’”

The Banns must be published in the true Names of the Parties.

Rex v. Billingshurst, 3 M. & Sel. 250. Removal from Salehurst to Billingshurst. Case:—The pauper, whose name is Abraham Langley, was married to his present wife in Lamberhurst, by banns, about four years ago, by the name of George Smith. Previously to his marriage he had resided about three years at Lamberhurst, and from his first coming, and during all the

A person, whose
baptismal and
surname was
A. L., was mar-
ried by banns by
the name of G. S.,

The Banns must be in the true names.

having been known in the parish where he resided, and was married by that name only, from his first coming into the parish till his marriage, which was about three years: Held, that the marriage was valid.

time he remained there, he was known by the name of George Smith only. Lord *Ellenborough*, C. J. "All that the law requires on this subject is, that marriages shall be solemnized either by licence, or publication of banns, otherwise the 26 Geo. II. c. 36, s. 8, declares that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns; or that the banns shall be published in the true names; but certainly it must be understood as the clear intention of the legislature, that the banns shall be published in the true names, because it requires that notice in writing shall be delivered to the minister of the true Christian and surnames of the parties, seven days before the publication: and unless such notice be given, he is not obliged to publish the banns. The question then is, has there been, in this case, that which is required, a due notification by the minister, on a Sunday, in time of divine service, of one of the persons intending to contract marriage? Now it appears that such notification has been made by the name of George Smith, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage, in that place, and that he was not known there by any other name. It would lead to perilous consequences, if, in every case, an inquiry were to be instituted, at the hazard of endangering the marriage of a woman, who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages, and bastardizing the issue of them, it is not very difficult to imagine. The object of the statute, in the publication of banns, was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained, than by a publication in the name by which the party is known? If the publication here had been in the name of Abraham Langley, it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose, either that these were not the same parties, or that there was some mistake. Therefore, the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name, in this case, would not have been the true name within the meaning of the statute. On these grounds I think that the act only meant to require that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances a ruin upon innocent parties. The court, therefore, cannot lend itself to a construction which would be pregnant with such consequences." *Le Blanc*, J. "The object of the marriage act was to insure notoriety to the transaction, and, I think, the court recollecting that, cannot say that a marriage by banns, published in the names by which alone the party was known, is a marriage without publication of banns. The argument is, that a marriage by publication of banns means, by publication of banns in the real names of the parties only; but the statute has said no such thing. If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true Christian or surname of the party or not, I think the marriage is good within the meaning of the statute. Therefore, I am of opinion, that upon the present occasion everything was done that was sufficient to give that notification of the marriage which it was the object of the marriage act to insure." Order of sessions confirmed.

Rex v. Burton-upon-Trent, 3 M. & Sel. 537. Removal from Grooby to Burton-upon-Trent. Case:—The pauper's father, whose real name was Joseph Price, was married at Leicester, by license, by the name of Joseph Grew, having changed his name to Grew because he had deserted from the army, and he was known by that name only at Leicester, where he lodged at the time of his marriage, and where he had resided sixteen weeks. He

A marriage by license, not in the man's real name, but in the name which he had assumed because he had deserted, he being known

The Banns must be in the true names.

by that name only in the place where he lodged and was married, and where he had resided sixteen weeks, was held a valid marriage.

Marriage by maiden name used by a widow is valid, unless assumed for a fraudulent purpose.

never passed by any name but Price in his father's family, and in the place where they resided. His wife did not know his real name till a fortnight after the marriage, when he told it her. The pauper was the issue of this marriage, and was born at Burton-upon-Trent, and after his birth his parents were married by the true name. The sessions considered the first marriage as invalid, and therefore that the pauper was not entitled to his father's settlement. Lord *Ellenborough*, C. J. "If this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act, and the rights of marriage, and the court would not have given effect to any such corrupt purpose. But where a name has been previously assumed, so as to have become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognized in the case of negotiable instruments, where, if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise, if he assume a name by which he had never been known before, for the purpose of the fraud. Now, here the party assumed the name for the purpose of concealment, and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me, therefore, that he had acquired the name, and that to have had a license in any other name would have been a fraud on the marriage act." *Le Blanc*, J. "The name was assumed by the father for the purpose of concealing himself as a deserter from his Majesty's service, and not with a view to impose upon the woman whom he married." *Bayley*, J. "The sessions may always draw the line, whether the name was assumed for a fraudulent purpose, as it regards the marriage, or not." Order quashed. (See 2 *East's P. C.* 967, 968.)

Rex v. St. Faith's, Newton, 3 D. & R. 348; 2 D. & R. Mag. Ca. 34. Order of removal of Ann Lovick from Norwich to St. Faith's, Newton, confirmed. Case:—The pauper, whose maiden name was Ann Lovick, was married on the 14th of September, 1812, to James Browne, a man of colour, whose settlement is unknown, and who was then a private in the 69th regiment. About half-a-year afterwards, Browne went to Ipswich, and the pauper, at his request, followed him thither, and remained with him there a few weeks, when she returned to Norwich, and never saw or heard anything of her husband afterwards, except that a report reached her of his death by drowning, but it is not otherwise known when he died, or whether he is dead. On the 31st of March, 1822, and after the pauper had received such information of the death of Browne, she was married, by banns, to William Rigg, widower, by the name and description of Ann Lovick, widow. Both at Ipswich, and after her return to Norwich, the pauper went by the name of Ann Lovick only, till her marriage with Rigg. *Bayley*, J. "The object of the statute was to make it notorious to the world who were the parties that were about to enter into the married state, and, therefore, wherever the name is fraudulently assumed or concealed, that object is defeated, and the marriage is void. But when the party has assumed a new name, not for any fraudulent purpose, but fairly and openly, and has, for a considerable period, used and been known by that name, then, it has been in several cases decided, a marriage under that name is valid. The name, in this case, does not appear to have been assumed for the purposes of the marriage, or for any improper purpose; and, under the circumstances of this case, at least as much notoriety was given of the person of the pauper by the name of Lovick, as could have been given by that of Browne. The former was her maiden name, she had gone by it for many years, and was, therefore, more likely to be recognized by that name than by the other. The mere fact that some one individual may be deceived is not sufficient to annul the marriage; the name must be assumed fraudulently. That has long been the rule of construction upon this subject, and that rule is acted upon in the cases that have been cited. I am, therefore, of opinion that this is a valid marriage, and that a different decision would be very likely to produce much mischief; for

where a party has several names, one of them may be easily omitted by accident or mistake, and it would be a most grievous thing if every marriage solemnized under such circumstances were to be deemed illegal."

Rex v. Tibshelf, 1 B. & Adol. 190. The pauper and her husband were married, in 1817, by banns, by the names of Joseph Betts and Mary White. The husband had been baptized as the son of John and Mary Betts. Mary Betts was the daughter of Samuel Wilson, and her husband having absconded shortly after their marriage, her son, the pauper's husband, was brought up by his maternal grandfather, and was always called by the name of Wilson, was bound apprentice by that name, with the consent of his grandfather, and was never called or known by the name of Betts, or by any other name than Wilson, either before or after his marriage with the pauper. The pauper, Mary, was the legitimate daughter of Job and Martha Hodgkinson, and was never called or known by any name, except Hodgkinson, till after her marriage; but in the register of her baptism she is described as "Mary, the daughter of Samuel White and his wife" Her mother was the daughter of Samuel and Dorothy White, and her father and mother resided with them at the time of her birth, and her mother's brother stated that he believed the entry in the register to have been a mistake of the clergyman who baptized her; and that he was the person who discovered the mistake in the register previous to the pauper's marriage, it having been supposed that her baptism was omitted to be registered. Lord Tenterden, C. J. "The question whether this removal is right or not depends upon the validity of the marriage between Joseph Betts and the said Mary. If the marriage was invalid, the order of sessions was wrong, and we are of opinion it was invalid. This marriage was in 1817, and at that time the only act by which marriages were regulated, was the 26 Geo. II. c. 39, which was finally repealed, except as to all acts, matters, and things done under its provisions, by 4 Geo. IV. c. 76. Neither that act, nor the repealed act 3 Geo. IV. c. 75, contains any clause rendering former marriages by improper banns valid; and if s. 19 of the latter act could have been construed as having that effect, it could not have any operation after the repeal of that act. The act 26 Geo. II. provides, by s. 8, that all marriages that shall be solemnized without publication of banns, or license, shall be null and void to all intents and purposes whatsoever. In the directions in that statute for the publication of banns, nothing is said as to the names of the parties, but s. 2 excuses the minister from publishing them, unless the parties deliver in, in writing, their true Christian and surnames. And in a series of decisions upon this statute, both in the Ecclesiastical Courts and the Court of King's Bench, it has been held that the clear intention of the legislature was that the banns are to be published in the true names of the parties, otherwise it is no publication at all. By these decisions these rules are fully established: first, that if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used, or by which they were ever known, the marriage in pursuance of that publication is invalid; and it is immaterial in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not. But, secondly, if there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one Christian name, or the names have been such as the parties have used and been known by at one time and not at another, in such cases the publication may or may not be void; the supposed misdescription may be explained, and it becomes a most important part of the inquiry, whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only that it is material to inquire into the motives of the parties. The substance of these rules will be found in the judgments of Lord Stowell, in the cases of *Sullivan v. Sullivan* (2 Hagg. Consist. Rep. 254), *Frankland v. Nicholson* (3 M. & Sel. 261, 1 Phill. Rep. 147), *Pougett v. Tomkins* (3 M. & Sel. 263), and *Mather v. Ney* (3 M. & Sel. 265), and in the judgments in *Rex v. Billingshurst* (3 M. & Sel. 256), in this court. The present case falls distinctly within the first rule. Whether the alleged husband was sufficiently

The Banns must be in the true names.

In the publication of banns, in 1817, a woman, named Mary Hodgkinson, was called White, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to the officiating clergyman without any intention to mislead, nor did any individual, having an interest in the marriage, appear to have been deceived: Held, that the marriage was void.

The Banns must be in the true names.

designated by the name of Betts we need not inquire, as we are clearly of opinion that the woman was never known by and never used the surname of 'White,' so as to make that, in any latitude of construction, 'a true name' within the meaning of the statute. Her family name, and that by which she was always known, was Hodgkinson. The only occasion upon which the name of White was applied to her was in the register of her baptism; she was not *baptized* by that name, for the surname is never used in the baptismal ceremony; but the name was entered in the register necessarily without her privity, and it seems without that of her parents, and probably by a mere error of the officiating minister, who appears to have mistaken her parentage, and considered her as the child of her maternal grandfather and grandmother. It is impossible, whatever may be the disposition to favour parties who have meant to act correctly, and from the best motives, to say that a surname so entered can be the true name of the party to whom it is applied. It is, doubtless, a great hardship upon these innocent persons to pronounce that this marriage is void, but it would be a much greater inconvenience to the public to alter the settled rules upon this subject, for the sake of preventing a particular mischief." Order of sessions quashed.

5. of Settlement by Hiring and Service.

V. Of Settlement by Hiring and Service.

This branch of the law of settlement has been prospectively materially altered by 4 and 5 Will. IV. c. 76, (passed 14th August, 1834), sect. 64 enacting, "that from and after the passing of this act, *no settlement shall be acquired by hiring and service, or by residence under the same, or by serving an office;*" and sect. 65 enacts, "that no person under any contract of hiring and service *not completed* at the time of the passing of this act, shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same." But, as for many years to come, questions will no doubt continually arise relative to settlements acquired by hiring and service, *antecedent* to this act, viz. 14th August, 1834, it is necessary in this edition to examine this branch of settlement.

The statutes relating to settlements.

Before this recent statute, 4 and 5 Will. IV. c. 76, the 13 and 14 Car. II. c. 12, s. 1, after reciting the evils resulting from the vagrancy of the poor, it was thereby enacted, "that it should and might be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace, within forty days after any such person or persons coming to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the *quorum*, of the division where any person or persons, that are likely to be chargeable to the parish, shall come to inhabit, by their warrant to remove and convey such person or persons to such parish, where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish to be allowed by the said justices."

Persons removable, unless security given for the discharge of the parish.

Certificates to prevent removal in certain cases.

Sect. 3. Provided also, "that (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish and one of the churchwardens and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases abovesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person or persons shall refuse to go, or

shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

By 1 Jac. II. c. 17, s. 3, it is enacted, "that the forty days' continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his or her delivery of notice in writing, (which they are hereby required to do,) of the house of his or her abode, and the number of his or her family, if he or she have any, to one of the churchwardens or overseers of the poor of the said parish, to which they shall so remove."

The 3 W. & M. c. 11, s. 3, enacts, "that the forty days' continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he or she shall deliver, of the house of his or her abode, and the number of his or her family, if he or she have any, to the churchwarden or overseer of the poor, which said notice in writing the said churchwarden or overseer of the poor is or are hereby required to read, or cause to be read publicly, immediately after divine service in the church or chapel of the said parish or town, on the next Lord's day when there shall be divine service in the same; and the said churchwarden or overseer of the poor is or are hereby required to register, or cause to be registered, the said notice in writing in the book kept for the poor's accounts."

But the 35 Geo. III. c. 101, s. 3, enacts, "that no person coming into any parish, township, or place, shall, from and after the passing of this act, be enabled to gain any settlement therein by delivery and publication of any notice in writing."

By 3 W. & M. c. 11, s. 4, "No soldier, seaman, shipwright, or other artificer or workman employed in their Majesties' service, shall have any settlement in any parish, port town, or other town, by delivery and publication of a notice in writing as aforesaid, unless the same be after the dismissal of such person out of their Majesties' service."

Sect. 7 enacts, "that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published as is herein before required."

The 8 and 9 Will. III. c. 30, s. 4. "And whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, be it therefore enacted and declared by the authority aforesaid, that no such person so hired as aforesaid shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year." (See the *principle* of that enactment, *Rex v. St. Giles's Reading, Cald.* 54, and *post.*)

And the 12 Anne, c. 18, s. 2, reciting the provision in the 8 & 9 Will. III. c. 30, as to poor persons residing in other than their own parishes under certificates, and that many persons bringing such certificates frequently take apprentices and hire and keep servants, who thereby attain settlements and become a great burthen to such certificated parishes: enacts that, "If any person whatsoever, who, upon or after the 24th of June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of

5. *Of Settlement by Hiring and Service.*

Settlement by forty days' residence from delivery of notice.

Notice to be published.

Notices abolished.

Soldiers, &c. not to gain a settlement by notice till after dismissal.

Hiring and service for a year, of unmarried person, &c. a settlement.

The hiring and service must be for one whole year.

No person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall gain a settlement there by reason of such hiring and service, &c.

5. *Of Settlement by Hiring and Service.*

The repealed friendly society act.

Provisions to prevent settlements being gained under particular circumstances.

June, 1713, be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of Great Britain called England, by means or license of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant by being hired by or serving as a servant as aforesaid to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding."

By 33 Geo. III. c. 54, s. 24, "No person who shall be an apprentice, bound by indenture to, or shall be a hired servant to or with any person who did come into or shall reside in any parish, township or place, under the authority of this act, and not afterwards having gained a legal settlement in such parish, township, or place, shall gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but all such apprentices and servants shall have their settlements in such parish, township, or place, as if they had not been bound, or had not been hired to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding." But the recent act relating to friendly societies does not contain the like provision. See Vol. II. title, "*Friendly Societies.*"

By 52 Geo. III. c. 72, s. 8, it is enacted, "That from and after the passing of this act, no person or persons shall by residence in any house, lodge, or other building, erected or to be erected within the said forest, (of Alice Holt, in the county of Southampton,) or by hiring and service either for the preservation of the said woods or plantations, or the game in the said forest, gain thereby any settlement in the parish of Binsted, in the said county, in which the said forest is situate."

By general turnpike act, 3 Geo. IV. c. 126, s. 51, and 4 Geo. IV. c. 95, s. 31, "no apprentice or servant of a collector or renter of tolls, or weighing machine, or residing in toll-house, shall thereby gain a settlement;" and see *Chitty's Col. Stat.* Vol. I. 492, note (m); and see 4 and 5 Will. IV. c. 76, s. 64, 1 *Adol. & El.* 244.

There are also other statutory provisions precluding persons, coming into parishes under particular circumstances, from acquiring settlements in those parishes, whilst they continue within the operation of those provisions, as will be seen hereafter.

The requisites of this description of settlement may be stated as follows:

Requisites in general of a valid hiring to give a settlement.

1st. With respect to the *hiring*.—That the master or mistress, and servant whether male or female, must be *capable* of entering into such a contract with each other; and all persons, (except husband and wife), however nearly related to each other, may make such a contract, even though one or both parties be under age.

2nd. The parties must not merely be competent to make a binding contract as *between themselves*, but they must be in that *unfettered condition* which the poor laws require in order to create a right of settlement by such contract duly performed. For instance, the master must not be a *certificate* man, nor must the servant be already under a subsisting contract as an apprentice, or soldier, or married, or a widower with children, &c.

3rd. The contract must be for a *year prospectively* from its date; but it is not essential that it should be actually so expressed, for if it can be collected from the other terms of the contract, as the wages, notice to leave, &c., that the parties *intended* that the hiring should be for a year, that will suffice.

4th. The master must have the control over the servant's *whole time* and services:—for if it is stipulated by the contract that the servant shall have the *right* to certain days or even hours to himself, independently of his

master, although he in fact employ those hours in his master's service, being paid for them, the contract will not confer a settlement.

5th. With respect to the *service*.—This likewise must be for a year; though intervals of absence by the master's authority will not prejudice: for the master may dispense with a portion of the service.

6th. It is not necessary that the *whole* year's service should be under the *yearly* hiring, though it must be *in the same service*; for if a person serve a few months without any yearly hiring, and then without quitting or suspending the service, contract to serve the same master for a year, and continue to serve under this contract a length of time sufficient, (even though it be forty days only), when added to the time served before the hiring for a year, to make a whole year's service, the settlement will be complete.

7th. It is not essential that the service should be under the *same master*; for if the *same service* is *continued* under the lessee, assignee, executor, &c. of the master with whom the contract was made, and the service in part performed, it will be sufficient for the purposes of the settlement.

8th. It is not necessary that any part of the service should be in the parish or place where the contract of hiring is made; or that the whole year's service should be in one and the same parish or place; or that it should be in the parish or place where the master resides: for wherever the servant resides the last forty days for the *purposes of the service*, there he will acquire his settlement.

9th. The forty days' residence for the purposes of the service, are not required to be *consecutive*; though they must be within the compass of a year. Thus if a servant, during a hiring and service for a year, serve in *several* parishes, his settlement will be in that parish in which he has *last served*, if in the whole he has resided and served *there* forty days.

Such are the rules of law by which settlements by hiring and service were governed. The sessions are to decide whether there was a contract of hiring, or only of apprenticeship, and not merely to find or state facts. (*Rex v. Great Wishford*, 5 Nev. & Man. 540.)

The decisions will be arranged under the three following heads and subdivisions.

I. *Of the Contract of Hiring;—and herein,*

1. *Of the Parties to the Contract.*
2. *What amounts to a Contract of Hiring and Service.*
3. *Where a Contract may be implied.*
4. *Where a Contract is indefinite.*
5. *What is a Hiring for a Year.*
6. *Weekly or Monthly Wages and Notice.*
7. *Hiring by the Job.*
8. *Retrospective Hiring.*
9. *Hirings made purposely to avoid a Settlement.*
10. *Conditional Hirings.*
11. *Exceptive Hirings.*
12. *Hiring with Limitation of Working Hours.*
13. *Imperfect Apprenticeship not a good Hiring.*

II. *The Service under the Contract;—and herein,*

1. *Of Connecting Services under distinct Hirings.*
2. *Of Lapse between Connected Services.*
3. *Of Dispensation.*
4. *Of Change of Master in the same Service.*
5. *Of Dissolution.*

III. *The Place in which the Settlement is Acquired.*

5. *Of Settlement by Hiring and Service.*

Requisites of the service to give a settlement.

1. *Of the Contract of Hiring.*

I. OF THE CONTRACT OF HIRING.

1. *Of the Parties to the Contract.*1. *Parties to the Contract.*

The 3 W. & M. c. 11, s. 7, enacts "*that if any unmarried person not having child or children shall be lawfully hired into any parish or town for one year, such service shall,*" &c., see *ante*, 329. Therefore the servant must be unmarried, without children, and *sui juris*.

The master may be a relation: he must not be a certificate man.

A widower may gain this settlement.

"Any Unmarried Person."] *Anthony v. Cardigan*, 2 Bott, 257. A widower is within the meaning of the act, and may gain a settlement by hiring and service.

If a married man agree to a hiring subject to approbation, and his wife die before the agreement is complete, and then the hiring be completed, it is sufficient.

Rex v. Banknewton, 2 Burr. S. C. 259, the pauper, a married man, agreed on the 16th of February, with the son of H. W., to serve H. W. for a year from the 24th of that month, at five guineas wages, provided H. W. should approve the terms. On the 18th the pauper's wife died, and on the 24th he went into the service of H. W., who on that day agreed to the terms made by his son. By the Court: "It is clear that the hiring was on the 24th, for the father might have dissented from the conditional agreement made by the son on the 16th; a settlement was therefore gained by the hiring and service."

If the man be single when the contract is made, marrying between the hiring and entering upon the service will not defeat the settlement in the absence of fraud.

In *Rex v. Allendale*, 3 T. R. 382, the pauper being unmarried, was hired for a year to serve T. B. at Allendale, as a hind. It is the custom of the country to hire married men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and servant, and perfectly understood by them at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of his service, he married, and entered upon his service a married man, and served out the whole year a married man. Lord Kenyon, C. J. "The principle on which this question must be decided has been long since settled. In *Farrington v. Witty*, and *Rex v. Banknewton*, the Court seemed to think that the time to be attended to was *the time when the contract was made*, which has ever since been considered as the rule; he was unmarried when he entered into his contract; and whether he married the day before the service commenced or afterwards it makes no difference." Buller, J., said, "that neither the custom of the country, nor the agreement between the parties, went to compel this pauper to marry before he entered upon this service; he was at liberty to do so or not, as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female; it is therefore indifferent to the master whether the servant be married or not, because if he be single he must hire some female to perform those services. As to the case of a contract at an unreasonable distance of time before the service is to commence, that would be strong evidence of fraud. So if the pauper had been under an agreement to marry, and his master had told him that he should not marry for a month to evade the statute, that also might be considered fraudulent."

Same point. *Rex v. Stannington*, 3 T. R. 385.

A marriage during the service does not defeat the settlement.

Farrington v. Witty, 2 Salk. 527. A servant came into a parish and hired for a year, served half a year, and then married; it was determined that the marriage did not defeat the settlement, for it did not hinder the service, and that the contract was not dissolved by the marriage. So also *Rex v. Clent*, 2 Bott, 417; *Rex v. Sutton*, 2 Bott, 418; *Rex v. Hanbury*, 2 Burr, S. C. 322; *Rex v. St. Giles's, Reading*, Cald. 54, *post*; *Rex v. Harberton*, *ante*, 317; *Rex v. Sandford*, 1 T. R. 281, *post*; *Rex v. Hardingham*, *post*.

A child emancipated is not within the meaning of the statute.

"Not having child or children," 3 W. III. c. 11, s. 7.] In *Anthony v. Cardigan*, (*supra*), the pauper had a daughter who was married and lived settled elsewhere; and it was decided that he was a single person within the

meaning of the act, though not expressly within the letter of it. The meaning of the statute is, that he might not bring any consequential damage to the parish; which he could not possibly do here. Same point in *Rex v. Cowhoneyborne*, 10 *East*, 88. See the case, *ante*, 306.

Rex v. New Forest, 5 *T. R.* 478. On Martinmas-day, 1777, E. Coates hired himself and served a year in the township of New Forest; on 22d December, 1777, he married. The pauper, son of E. C., on the same Martinmas-day, (being under sixteen, and without having gained a settlement) hired himself for a year to R. N., of Ellerton, and served the year. *Per Lord Kenyon*, C. J. "The construction which the court has put upon the 3 W. & M. c. 11, s. 7, is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent his acquiring a settlement by serving a year under that hiring. But here the son was not separated from the father when the latter was hired; he had gained no settlement for himself; he had entered into a contract, 'which might or might not have been completed,' but which, when completed, would give him a settlement; but at the time when the father entered into the relation of a servant at New Forest, the son formed a part of his family. (See this case, *ante*, 312.)

1. Of the Contract of Hiring.

But a child whose emancipation is incomplete, is within the act.

The Servant must be sui juris.

Rex v. Dawlish, 1 *B. & Ald.* 281. A hiring during a subsisting apprenticeship is insufficient. See case *post*. See *Rex v. Bow*, 4 *M. & Sel.* 383, *post*.

Rex v. Norton, 9 *East*, 206. Case:—The pauper was duly enlisted as a private in his Majesty's marine forces, from which he deserted, and then hired himself for a year, and served a year under the hiring. Afterwards he was taken up for desertion, tried, and convicted. It was urged that the pauper was as much *sui juris* as the militia-man. Lord *Ellenborough*, "That was the case of a lawful contract with a just exception. The public had a claim upon the militia-man's service for a certain time, and subject to that claim he might lawfully contract to serve his master. If this case had been *res integra* there might have been great doubt whether the word 'lawfully,' were not to be narrowed to a contract and the terms of it lawful; and if lawful in its form, whether the party serving under it could be disabled from gaining a settlement by reason of his having before contracted an engagement with another person, inconsistent with it. But a variety of cases have decided the question in the case of an apprentice: and this not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture; but upon the broad principle that one, who has contracted a relation which disables him from serving any other without the consent of his first master, is not *sui juris*, and cannot lawfully bind himself to serve such master, so as to gain a settlement under such contract. In reason and principle it can make no difference whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory on him, which disables him from binding himself to serve a second master. The objection is, that he cannot give the master a control over his service for the whole period which the master stipulates for, and has a right to require by the contract. The king's officers might at any time have reclaimed him and taken him out of the service in which he was engaged: he cannot, therefore, be said to have been lawfully hired into it. A soldier is at least as much bound to the service of the king, as an apprentice is to that of his master; and nothing is to be inferred from the measured language of the court in the case of an apprentice, in not laying down the principle broader than the matter in judgment required. Nothing was said intimating an opinion that the rule was confined to the case of an apprentice, and therefore we must look to the reason and principle of those decisions when we are called upon to apply the rule to similar cases. The other judges agreed that the principle was, that if the party cannot make such a contract for his service, of which the master may avail himself for the whole year, no settlement can be gained.

A deserter can gain no settlement by hiring and service.

Rex v. Beaulieu, 3 *M. & Sel.* 229. Removal from Milton to Beaulieu,

A private soldier,

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with the permission of his officer, entered into a contract of hiring and service, conditionally for a year, if so long allowed to be absent, and served the year: Held not to gain a settlement, as not being *sui juris*.

the pauper's maiden settlement. Order confirmed. Case:—The pauper is the wife of Hans Peters, a Swede. Some years ago he entered as a soldier into the sixtieth regiment of foot, and in 1806 was invalided, and sent to the depôt at Lymington. It was suggested to government by the commanding officer there, that it would be an economical plan to give the invalids leave of absence, upon their agreeing to relinquish their pay during such absence. The suggestion was approved, and ordered to be carried into execution. In 1808, H. P. hired himself as a monthly servant to Mrs. B., and afterwards, on the 20th of July in that year, hired himself to Mrs. B. for a year, and served such year in Lymington. Previous to this second hiring, Mrs. B. applied to the commanding officer at the depôt, to know if P. might hire himself for that period, and was told that he might. During his service with Mrs. B. he received no pay, nor was he called upon to, nor did he, perform any military duty: but he used to go to the depôt from time to time to get his furlough renewed, which took him half an hour. The commanding officer could send for him at any time, if the exigences of the state required it. Furloughs were granted to him every half-year. Lord *Ellenborough*, C. J. "To confer a right to a settlement by hiring and service for a year, as there are no words in the statute which qualify the general sense of the word hiring, I must take it to mean an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party who hires himself has the power of communicating to the master an absolute right to his service for the whole time. In order, therefore, to do this, the party must be *sui juris*, and have the faculty of disposing of his own service. I think this case falls strictly within the analogy of the case of the apprentice, who, in respect of his obligation to serve one master, is disabled from entering into a contract to serve another. However, the cases of the militia-men have been pressed upon our attention. I would wish to speak of those cases, as of the decisions of persons who have gone before us so highly venerable, with all the respect that is due to them, and I would therefore avoid trenching upon them as little as possible. But when I find them speaking of leaning in favour of settlements, and when I recollect that a pauper must be provided for somewhere, either as a settled inhabitant or as casual poor, and when I find too that one of those decisions goes the length of holding that eleven months may mean a year, I really am unable, with all the respect I bear to those persons who decided them, to go along with them so far. Perhaps, therefore, it may be the best thing to say of the militia-men's cases, that they are to be considered as exceptions. Here it appears that there has been a hiring for a year, but not a lawful hiring in the sense of an effectual hiring. An effectual hiring is, where the servant is enabled to give the master a *quid pro quo*. Had this person the power of so doing? He had not. There was a halt, and a pause to be made four times during the year, until he should renew his furlough. If the question were raised upon special verdict, whether this was an effectual hiring, understanding by that that the party must have a capacity of conferring what he stipulates for, could it be argued upon a statement of these circumstances, that the pauper's husband really passed to the master an interest in the whole of his service? His service in reality belonged to the crown, and he could only contract for so much of it as was remitted out of the right of the crown. It appears to me, therefore, that here has been no lawful hiring for a year, inasmuch as the servant had not the faculty of communicating the service he contracted for. It is said, here was no fraud, and that is true; but there is the vice of the argument, for this is not a question between the master who hires and the man who is hired, but whether a condition, which the legislature has imposed on this branch of settlements, has been complied with. The question is, whether this be such a hiring as the legislature intended. It seems to me that it is not, and that the reasoning in the case of the apprentice applies with full force to the present case." *Le Blanc*, J., (a) among other things, said, "If the pauper was a soldier, and subject to a control or command inconsistent with his entering into any other absolute engagement to serve another master,

(a) These learned judges gave very elaborate judgments.

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his leave of absence must have been renewed, and if not renewed, he would be obliged to return to his duty under the penalty of being treated as a deserter. This is not like a conditional contract, for here, at no time, could the party make a valid contract for a year." *Bayley, J.*, "thought that this hiring was sufficient to confer a settlement at Lymington. Suppose a master going abroad to say to his servant 'I may be absent six months, or even six years, remember in any bargain you make, keep yourself at liberty to come to me on my return.' Supposing that servant to hire himself to another master for a year, provided his former master should not return, this would be a valid contract. It seems to me that here the party was *sui juris* to enter into the contract; that this was a contract which was only defeasible, and would confer a right of action to the master, if the servant absented himself on any other grounds except that of his being called upon by the act of government. For these reasons, and as I do not find any thing in the statute but the word lawful, to limit the nature of the hiring, and inasmuch as there has been a defeasible hiring for a year, which has not been defeated, and the party who was hired committed no fraud, but communicated the circumstances to the person who hired him, it strikes me, that this was a sufficient hiring to confer a settlement." (*Dampier, J.*, was absent.) Order confirmed.

Rex v. Holsworthy, 6 B. & C. 283; 9 D. & R. 322, S. C. Order of removal of F. H. Trim, &c. from Thornbury to Holsworthy, confirmed. Case:—In May, 1819, the pauper was enrolled as a substitute in the S. D. militia, as a private, to serve for five years. In June, 1822, whilst he was still a member of the corps, being at Plymouth, he was sworn in a recruit of the 5th regiment. When the serjeant paid him the enlistment money, the pauper told him he was in the militia, and the serjeant bid him say nothing about it. He did not, and was afterwards convicted and imprisoned for it. In 1823, he hired himself, and served for a year in Holsworthy. *Bayley, J.* "I think this case does not admit of any doubt. It is not necessary to say whether a militia-man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting that he is in the militia, and therefore liable to be called out during the year. If the master chooses to engage the servant, subject to the risk of his being called out to perform the duties of a militia-man during the year, I do not see that there is any thing illegal in such a bargain. It may be considered a conditional hiring during the year, and if the militia are not called out, a settlement may perhaps be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have, and the pauper stipulates to give his services for one whole year; there is no qualification or condition whatever in the contract, and if there were any it ought to have been stated, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper's being in the militia may have arisen from his considering it wholly immaterial, from omission, or from any other circumstances. Without, therefore, breaking in upon any case in which it has been decided that a militia-man, who, in his contract of hiring, stipulates for the time that he may be called upon to perform his duty in the militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper, not having communicated to the party whom he contracted to serve for a whole year that he was in the militia, cannot be said to have 'lawfully hired himself,' and therefore he gained no settlement in Holsworthy." *Holroyd, J.* "It is not to be presumed that, at the time of the hiring, the pauper communicated to his master that he was in the militia; and there is nothing in this case to show that a communication was made. The case seems to fall within the principle laid down by Lord *Ellenborough* in *Rex v. Norton*. It is said that this case differs from that, because the militia, not having been called out during the year, there was a year's service under a conditional hiring; but the objection is, that the pauper was not capable of making a contract, so as to give the master a control over his services during the whole year. Now no communication having been made to the master that the pauper was in the militia, I

A pauper, being in the militia, cannot lawfully hire himself for a year, without disclosing that fact to his master.

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A pauper, who had volunteered into the militia, cannot lawfully hire himself, unless he discloses this fact to his master.

am of opinion that this is an absolute, and not a conditional hiring. It is quite clear that the pauper was not capable of making an unconditional contract to serve for a year." *Littledale, J.* concurred. Order of sessions quashed.

Rex v. Taunton St. James, 4 M. & R. 695; 9 B. & C. 831, S. C. Order of removal from Taunton St. James, to Milverton, quashed. Case:—The pauper, at Lady-day, 1811, hired himself as a servant in husbandry for a year to Mr. Handford, of Milverton; after serving him for three months, having, at the Christmas preceding, volunteered into the local militia of Somerset, he went out into actual service for three weeks, and then returned to Handford's service, remained till Lady-day, 1812, and received his wages, deducting for the three weeks of his absence. The pauper did not tell Handford, when he first bargained with him, that he was in the militia, but told him a week or two afterwards, and Handford said it did not signify, for the pauper could, at the end of the year, deduct for the time he was absent. *Bayley, J.* "This case depends on the construction of the 15th section of 48 Geo. III. c. 111. The 3 Will. III. c. 11, requires that in order to gain a settlement by hiring and service, the party shall be lawfully hired for a year. It has been established by several decisions, that a party, at the time of hiring, must be *sui juris*, so as to be competent to give that species of service which he contracts to give. Upon this principle, it has been held that neither a deserter from the king's service, nor an invalid soldier, having leave of absence, nor a militia-man, can lawfully hire themselves for a year, so as to gain a settlement. In *Rex v. Holsworthy* it was held that if a person who had been enrolled as a substitute in the militia, and hired himself for a year, did not, at the time of hiring, inform his master that he was a militia-man, no settlement was gained. Now that decision applies to the present case, unless it be distinguishable by reason of 48 Geo. III. c. 111, s. 15. That provides 'that no ballot, enrolment, and service under that act shall extend to make void or in any manner to affect any indenture of apprenticeship, or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under that act of any apprentice or servant shall be deemed or construed, or taken to be an absence from service, or breach of any covenant or agreement as to any service, or absence from service, in any indenture of apprenticeship, or contract of service.' These words will undoubtedly apply to all contracts of service existing at the time of the ballot or enrolment, as well as to those made afterwards. The question is, whether they include all contracts whatever, or those only which were in existence at the time of the ballot or enrolment. Now, in order to ascertain the sense in which they are used in this act, we may fairly look to other acts relating to the same subject-matter; and if we find the words used in a restrained sense in those acts, we ought to construe them in the same sense in this, for it is a fair rule of construction that the same words in a statute *in pari materia* respecting the same subject, should receive that same meaning. No such words are to be found in 42 Geo. III. c. 90, but they are to be found in 52 Geo. III. c. 68, s. 63. If, as used in that statute, they apply to contracts existing at the time of the ballot or enrolment, that is a legislative exposition of them, and they ought to receive the same construction in the 48 Geo. III. c. 111, s. 15. Now the words in 52 Geo. III. manifestly apply to contracts existing at the time of ballot or enrolment, and not to contracts subsequently made. The 60th section enacts 'that the enrolment of servants shall not vacate or rescind contracts between master and servant, unless the local militia shall be called out, or unless the person enrolled shall leave the militia for the purpose of being trained.' That section applies to contracts existing at the time of the enrolment, for such contracts could only be vacated or rescinded by the enrolment. Section 63 is a transcript of sect. 15 of 48 Geo. III. c. 111. It begins, 'Provided always,' and then proceeds in the same words. Now a proviso is something engrafted on a preceding enactment, and the proviso in the 63d sect. manifestly applies to the enactment in the 60th sect., that enrolments shall not rescind contracts made between masters and servants: the words of the proviso apply to the

same species of contract. Then that being the fair meaning of the words used in 52 Geo. III. c. 68, they ought to receive the same construction in 48 Geo. III. c. 111, and giving them that construction, there is nothing in that statute enabling such person to make an absolute contract for a year, so as to gain a settlement. The clause ends with a proviso as to service: that may make the service good, but my opinion is not founded on the description of service, but upon the want of capacity to contract. I think that the pauper was under a disability at the time of hiring, to contract to perform the service which he undertook to perform, and therefore that no settlement was gained in Milverton." *Littledale, J.* "It is a general principle of law, that if a man enters into a contract, he ought either to be in a situation to perform it, or to inform the person with whom he contracts of his disability. This is a duty founded on moral principle, and is due from one member of society to another. If the words of an act are capable of two meanings, and one construction will have the effect of enforcing this moral obligation, and the other will not, that construction should be adopted which will have the effect of enforcing it. Now it is contended that the words of the 48 Geo. III. c. 111, s. 15, 'no ballot, enrolment, and service under this act shall extend to make void, or in any manner to affect any indenture of apprenticeship, or contract of service between any master and servant,' extend not only to contracts existing at the time of their enrolment, but to contracts subsequently made. I think the words 'made void' *ex vi termini* apply to contracts *in esse*. But supposing that to be doubtful, then calling in aid the principle that a man is bound to disclose any thing which may disable him from performing his contract, I will, in order to give effect to that principle, give the words a limited construction, and hold that they extend only to contracts existing at the time of the ballot or enrolment. Putting that construction on the words, a party, in order to gain a settlement by a contract of hiring made after ballot or enrolment, must disclose his disability to the person with whom he contracts. This would be the construction I should have put upon the words, if the 48 Geo. III. c. 111, had stood by itself. But the local militia act, 52 Geo. III. c. 38, s. 63, contains an enactment in the same words; and by sect. 60 these words are confined to contracts existing at the time of enrolment or ballot. We violate no rule of construction, by giving to the same words in two acts, relating to the same subject, the same meaning. I think, therefore, if there be any ambiguity in the 48 Geo. III., it is removed by the legislative exposition put upon the words in 52 Geo. III.; and, therefore, there was no lawful hiring for a year." *Parke, J.* "The question is, whether at Lady-day, 1811, there was a lawful hiring for a year; assuming that the subsequent conversation between the master and servant amounted to a second hiring, it was not for a year. To constitute a lawful hiring, the party must have a power to contract to serve for the period during which he agrees to serve. *Rex v. Holsworthy* shows that if a party is under a disability, he may, by disclosing it, make a conditional contract. But if he does not disclose it, it is an absolute contract; into which he is not capable of entering, and therefore not a lawful hiring. Here there was no disclosure. Then the only question is, is there any enactment in the 48 Geo. III. c. 111, giving a local militia man a power to make an absolute contract of hiring? It cannot be intended that the legislature meant to give such a power, for they might thereby enable a party by law to commit a fraud; the master would contract on the supposition that the party with whom he contracts had power to bind himself for a year, the latter knowing all the time that he had not. But, on the other hand, it might properly be provided that a contract made *bona fide* while the party was a free man, capable of contracting, should not be avoided by reason of his subsequently becoming a militia man. The statute does not in terms enact that an enrolled person shall be *sui juris*. The 15th sect. applies to contracts actually entered into at the time of the ballot or enrolment. No such power, therefore, is given by express words or by necessary implication. Coupling the 15th with the 24th sect. it appears to me doubtful whether a volunteer and a balloted man are placed in the same situation. But assuming that they are, all the legislature says, is, that if a master con-

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If the servant informs his master of his liability to be called out in the militia, he will gain a settlement, although he serves in the militia for fourteen days.

tracts with a free man, the master must take his chance in case of a ballot, and shall not contract against the chance of a ballot, for such contract is made void. But there is no provision that a man shall have the same capacity to contract, as if he was not a local militia man. No power is, therefore, given to enter into an absolute contract to hire for a year. Here the pauper entered into an absolute contract, which he had no power to do. There was no lawful hiring for a year, and no settlement was gained." Order of sessions confirmed.

Rex v. Emley Castle, 3 B. & Adol. 826. G. Hall, &c. was removed from Kemerton to Emley Castle. Order confirmed. Case:—G. Hall, the pauper, hired himself on the 10th October, 1811, to T. Bluck, of Emley Castle, until Old Michaelmas-day in the following year, at 14*l.* 14*s.* wages. Having been called upon to serve in the Warwickshire local militia in the course of the preceding year, he informed Bluck of that fact at the time of hiring, and at the same time told him that he expected to be called out to serve again in the May following; and it formed part of the agreement between them, that the pauper should allow his master to deduct out of his wages 1*s.* a day for as many days as he should be absent on service with the militia. The pauper entered into the master's service, and resided and served the whole year in the appellant parish, except fourteen days, during which he was absent on service with the militia. At the end of the year he received his wages, with the exception of 14*s.*, which Mr. Bluck deducted for the fourteen days' absence. Lord Tenterden, C. J. "I think the pauper clearly gained a settlement in the parish of Elmley Castle; and my opinion is founded on the terms of contract of hiring and the 65th section of the 52 Geo. III. c. 38." His lordship then referred to the terms of the case, and added, "There is nothing of absolute exception in the terms of the contract. The exception or condition, if any such there was, arose from the operation of law on the individual. He was a militia man, and as such was bound by law to serve, if called upon so to do. Then the 48 Geo. III. c. 111, s. 15, and the 52 Geo. III. c. 38, s. 65, enact 'that no ballot, enrolment, and service under this act shall extend to make void or in any manner to affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under this act of any apprentice or servant shall be deemed an absence from service or a breach of any covenant or agreement as to any service or absence from service in any indenture of apprenticeship or contract of service.' The service of the pauper therefore in the militia is not in point of law an absence from his service with his master. It is true that in this case the parties by their contract have provided that while the pauper was serving in the militia, though in point of law he must be considered as serving his master, he was not to receive any wages. But that makes no difference; the general words of the act are sufficient to enable us to say that under such a contract as the present, and notice having been given at the time of hiring that the servant was liable to be called on to serve, he was in point of law serving his master while he was in the militia, so as to acquire a settlement by hiring and a service for a year." *Littledale*, J. "This case comes very near those of *Rex v. Westerleigh* (a) and *Rex v. Winchcombe*, (b) but whether those decisions were right or not, the effect of the clauses in the militia act is to place this party in the same situation as if he had served the master during the time he was in the militia." *Parke*, J. "This case is undoubtedly very like *Rex v. Westerleigh* and *Rex v. Winchcombe*. In *Rex v. Taunton St. James* (c) the objection was that the pauper was not, when he hired himself, capable of making an absolute contract to serve for a year, and therefore having made such contract without reference to his liability as a militia man, he was not lawfully hired for a year, and gained no settlement. But here the pauper did communicate the fact of his being a militia man to the master. There is nothing in that case to show that under such circumstances

(a) *Burr. S. C.* 753.

(b) *Dougl.* 391.

(c) 4 *M. & R.* 695; 9 *B. & C.* 831.

a service in the militia may not be considered as service to the master." *Taunton, J.* "I am of the same opinion, and I think the sessions would have done better not to have sent up this case. *Rex v. Westerleigh* and *Rex v. Winchcombe* were decided by judges who were eminent sessions lawyers; and I think the principles upon which those decisions took place are correctly stated by Mr. *Nolan* in his *Treatise on the Poor Laws*. *Rex v. Holsworthy* (a) was decided on the ground that the pauper did not at the time of hiring inform his master that he was a militia man. Here the pauper did so. There was a good hiring for a year. The statute enacts that no service in the militia shall be deemed to be an absence from service with the master; but independently of that statute, my opinion, founded on the decisions of *Rex v. Westerleigh* and *Rex v. Winchcombe* would have been the same." Order of sessions confirmed.

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Rex v. St. Mary, Colchester, 3 N. & M. 113; 5 B. & Adol. 1023. Thomas Lester was removed from Stratford St. Mary to St. Mary-at-the-Walls, Colchester. Order confirmed. Case:—The pauper's father had gained a settlement in the parish of St. Mary-at-the Walls. In the year 1811 the pauper was a private in the 1st regiment of Essex local militia, commanded by Colonel Strutt. On the 24th of April, 1811, the regiment was assembled for training at Colchester, and continued there in training till the 15th of May following, up to which day the pauper was a drummer upon the permanent staff of the regiment. On the 16th of the same month, the pauper, then being off the permanent staff, Colonel Strutt, who knew that the pauper was in the local militia, hired him for a year at the wages of 10*l.* The pauper served the colonel under that hiring. He resided in St. George, Hanover Square, in London, until the 4th of May, 1812, upon which day the regiment was again assembled for training at Colchester. Colonel Strutt went there to take the command, and the pauper accompanied him, and was reported as belonging to the regiment. Each officer being by the rules of the service allowed a soldier from the ranks as a personal servant, the pauper was chosen by the colonel to be his servant. The regiment continued to do duty at Colchester till the 19th of May in that year, during which time the pauper was under military control, but he was only paraded once, and served the colonel during the whole period as an indoor servant. The pauper received pay from the crown whilst the regiment was assembled; he also received his wages from his master for the same period. Upon the 16th of May, 1812, the colonel paid the pauper his wages of 10*l.*, and upon that day hired him for a year from that time, at the wages of 14*l.* the year. Under this second contract the pauper continued in the service of Colonel Strutt till November, 1812, when he was discharged, having remained from the 16th to the 19th of May, 1812, at Colchester, under military control, serving the colonel as before mentioned. *Denman, C. J.* "In *Rex v. Elmley Castle*, *Rex v. Taunton St. James* was clearly before the court; it was cited by the counsel, and referred to by one of the judges. Those cases were decided within the space of three years of each other, and my brother *Littledale* concurred in both judgments. The ground of distinction taken in *Rex v. Elmley Castle* is very satisfactory. This case falls within it, and the pauper therefore gained a settlement by his service with Colonel Strutt. The order of sessions must be quashed." *Littledale, Taunton*, and *Patteson*, Justices, concurred. Order of sessions quashed.

Same point.

Rex v. Witnesham, 4 Nev. & Man. 447; 1 Harr. & Woll. 43. An order for the removal of Robert Copping, &c. from Swilland to Witnesham was confirmed. Case:—A few days after Michaelmas, 1807, the pauper let himself to Mr. Keen, a farmer of Clopton, for a year, to commence at the Michaelmas day following. The pauper went into the service accordingly, and stayed his time. He slept all the time at Clopton, and received his wages. A year and a half before the pauper entered into the service of Mr. Keen, he had been inrolled as a member of the Helmingham corps of volunteers, which corps was duly constituted according to the acts relating to corps of yeomanry and volunteers in Great Britain. During all that time, and throughout his

A member of a
volunteer club is
not *sui juris*.

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year's service, the pauper duly attended muster, and was duly returned by the commanding officer as an effective member of the corps. He did not communicate the fact of his being a member of the corps to Mr. Keen until he had entered his service, nor did he ever give fourteen days' notice of an intention to quit the corps. He did not take the oath of allegiance according to 44 Geo. III. c. 54, s. 20. The sessions thought that he was not *sui juris* at the time of hiring, although he had not taken the oath of allegiance. *Cur. adv. vult.* Lord Denman, C. J. "The question in this case is whether a person who was at the time a member of a volunteer corps, could gain a settlement by hiring and service. We have been referred to the volunteer act (44 Geo. 3, c. 54), to the act for the defence of the realm (43 Geo. III. c. 96), and to the militia acts of 42 Geo. III. c. 90, 55 Geo. III. c. 65, and 55 Geo. III. c. 168. It seems to us that the volunteer act puts a volunteer upon the same footing as a militia man, and that by becoming a volunteer, the pauper in this case had put it out of his power to contract to serve his master during the whole year. This case therefore comes within the authority of the militia man's case, in which it was held that no settlement was gained." [Sir John Campbell, *amicus curiæ*. "Lord Erskine wrote a celebrated book upon the subject, in which he came to the same conclusion."] Lord Denman, C. J. "We are glad to hear our opinion confirmed by that of so learned a person. We thought it strange that the question should never before have been considered." Order of sessions confirmed.

Age of the servant or master.

The contract of an *infant* made for his own benefit is not void, but voidable only, and therefore an infant may enter into a contract of hiring and service, with the permission of his parent, and thereby gain a settlement. (*Rex v. Chillesford, infra.*)

If a boy be bound *apprentice* to a person under age, the binding is sufficient for the purposes of a settlement, as the indenture is not in such case void, but voidable only. (*Rex v. St. Petrox, Dartmouth, 4 T. R. 196.*) By the same rule therefore it may be considered that a contract of hiring and service with a master who is a minor, is a valid contract, and if duly performed, will entitle the servant to a settlement.

Master must not be a certificate man.

The master must not be resident under a certificate, unless he has a lease of a tenement of the annual value of 10*l.* (*Rex v. Nacton, 3 B. & Ad. 543, post.*) A parish certificate extends to a wife married after it is granted, and no apprentice to such wife, after the husband's death, can gain a settlement in the certificated parish (*Rex v. Hampton, 5 T. R. 266*), the principle of which decision is equally applicable to cases of hiring and service.

An infant, whether emancipated or not, may hire himself to his father.

Where the master is also parent of the servant.

Rex v. Chertsey, 2 T. R. 37. The pauper, at the conclusion of a service by which she gained a settlement in Chertsey, went to her father's (a day labourer), who in consequence of his wife's death had previously applied to her to come and live with him, to do the offices of a servant for a year in the parish of Thorpe, for which she was to have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got in her former place, her father was to make up the difference. She lived with him more than a year in pursuance of this agreement, and made more than her former wages by her extra labour and profits, and at the end of the year her father gave her ten shillings as an additional recompence for having gone out reaping with him in the harvest month. The court held this a good hiring and service, and that a settlement was gained in the parish of Thorpe. (*S. C. post.*)

Missenden v. Chesham, 2 Bott, 173; Fol. 142. The pauper had gained a settlement in Chesham, and afterwards came to live with her father in Missenden, who promised to give her 10*s.* a year, and also what she might be able to gain by her extra service and labour. She served under these circumstances for more than a year. The court held that a settlement was gained.

An unemancipated son may acquire a settle-

Rex v. Chillesford, 4 B. & C. 94; 6 D. & R. 161; 3 D. & R. Mag. Ca. 155. The pauper's father let himself as a shepherd to Mr. Taylor, of Blyth-

burgh. The father hired every year one or two pages, over whom Taylor had no control, and about nine years ago, when one of the pages was to leave, the father, about a week before old Midsummer, agreed with his son, the pauper, at that time nineteen years of age, and unemancipated, to serve him for a year, from old Michaelmas to old Michaelmas, in Jarvis's place, at the same wages, 8*l.* a year, which time the pauper served, sleeping in his father's house.

Rex v. Winslow, 4 B. & C. 94; 6 D. & R. 168; 3 D. & R. Mag. Ca. 163. Elizabeth, the wife of Thomas Lane, was removed from Winslow to Beaulieu. Order quashed. Case:—T. Lane, the husband of the pauper, when about fourteen years old, being then unemancipated, was hired by his father, who was a sawyer, residing at Beaulieu, but not having a settlement there, to assist him in his work as a sawyer. A contract was, in point of fact, made between them, whereby the son agreed to serve the father for a year at the wages of 2*l.* 10*s.*, his board and lodging being also provided by the father. He served this year with his father in Beaulieu, and received his wages, and, at the expiration of this contract, served his father for two successive years, under new contracts, at increased wages. *Abbott, C. J.* "I am of opinion that in each of these cases the pauper gained a settlement by hiring and service. It is conceded that, if the pauper had been previously emancipated, he might have gained a settlement by hiring and service for a year with his own father afterwards. But emancipation does not confer any capacity to contract, and the objection here is, that the son has not any capacity to contract with his father. It must be admitted that he might have contracted with a stranger without, or, at all events, with his father's permission, to serve as a yearly servant. The contract of an infant, if it is made for his benefit, is not, according to the general principles of law, absolutely void. It may be voidable at the election of the infant himself, but of no other person. In this respect, this case is very distinguishable from a contract of hiring and service by a person who was a soldier at the time of hiring. There the consent of the officer was completely nugatory, because the officer could not consent to the contract. The soldier was not then *sui juris*, but was under the dominion of the crown, and the crown had a right to avoid the contract at any time; and, therefore, in that case the court very properly held that the contract was not valid in law. But in this case, the contract is not void, but voidable only. If, therefore, an infant may, with the permission of his father, enter into a contract with a stranger, why may he not do so with his own father? I know of no such incapacity, if the son is capable of serving as a servant, and his father thinks his services worth remuneration. There being nothing, therefore, which declares such a contract with the father to be void, can we say that there is any thing which shall prevent the son from gaining a settlement by such a hiring and service? It is said that, if a settlement can be so gained, it may enable a father to confer a settlement on his son in a parish in which the son could not gain a derivative settlement from his father. But this is not the only case in which a person may derive a settlement from another who has himself no settlement in the parish. Then it is put strongly, and with so much force, as to induce me to pause in the conclusion to which my mind was originally prepared to come, that if we decide this to be a settlement, it may lead to much confusion, and to the raising of many questions of a similar nature for the determination of the quarter sessions. I cannot say that such may not be the case; but, however, when such questions shall be raised, it will be the duty of the quarter sessions to look narrowly into the facts of the case, and see whether there really was any contract of hiring and service. One mode of ascertaining that will be, to inquire whether the father had any occupation for a hired servant, and whether he had any thing for him to do in that capacity; and if the father had no employment for a hired servant, the sessions may reasonably conclude that there was no contract for hiring and service. In the first of the cases at bar, it appears that the son came into the place which had been filled by another person, who had been hired at yearly wages. That is abundant evidence that the father had really occa-

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ment by a *bonâ fide* contract of hiring and service for a year with his father, in a parish where the latter has no settlement, notwithstanding the 3 & 4 W. & M. c. 1.

Mode of ascertaining the existence of such a contract.

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sion for a servant of that description. In the other case the father was a sawyer, and he had almost always occasion for two persons to assist him in his business. Indeed the nature of the trade itself, which requires the concurrence of two persons at least, to carry it on with skill, shows that the father had occasion for a servant, and it is stated as a fact, that for several successive years the pauper had served him at increased wages. For these reasons it appears to me that a settlement was gained by the paupers in both cases." *Bayley, J.* "It appears to me that an unemancipated son is competent to enter into a contract of this description with the father, and that all the legal consequences resulting from such a contract follow from the existence of that contract. It is clear that an infant may bind himself to a stranger. It may be in general supposed that such a contract is entered into with the consent and concurrence of the father, but there may be instances in which the father is not in any respect consenting, and even where a son, against the father's consent, enters into such an engagement, yet still he will gain a settlement, and he may insist upon having his wages paid him, and he may be liable to all the statuteable stipulations and regulations respecting the relation of master and servant. If then an infant may bind himself to a third person by a contract of hiring and service, the question is, whether the relation of parent and child destroys the capacity to contract. It is clear that it does not do so in the case of emancipated natural or step-children (*Rex v. St. Peter's, Dorset, Burr. S. C. 513*); and yet if a step-child is capable of contracting with his step-father, the same mischiefs result as if his own father consented. The same observation applies to emancipated children. If the father has no occasion for a servant, and the employment of the son in that capacity is merely a pretence, the sessions will decide accordingly; but if there is a *bonâ fide* contract, why may not that contract produce a new relationship and create new rights and obligations between the parties? I see no reason why the father and the son should not be at liberty to enter into a contract of that description. It gives to the father a new right of control, and the child a right to wages which is beneficial to him." *Littledale, J.* "My brother *Holroyd*, who has left the court, desires me to say that he concurs in the opinion delivered by my Lord Chief Justice. By law a parent has a right to exact service from his son or daughter, and this is the foundation of the action for seduction, and no proof of actual service is necessary. If then there be a species of service due from the child to the parent, why may not the obligation to serve be made stronger, by allowing the parent to hire the child for a certain time at stipulated wages? It is admitted that an emancipated child may hire himself to his father; but it is said this may not be done where the child is unemancipated, because the child being already under the control of the parent, and owing him service by the law of nature, he cannot enter into such a contract. But there seems to me to be no reason why a child may not contract with his parent for the performance of other services than those which are due in consequence of the relation of parent and child. Such a contract is highly beneficial to the child, because it superadds the salutary restraint of the master to that of parent, and renders him amenable to the statute of regulations applicable to master and servant. If then, in point of law, such a contract be valid and binding, there seems to be no reason why a settlement should not be gained by a service under it. Some inconveniences may arise from the decision in this case, but that is no reason why a contrary decision should be pronounced, so as to deprive these paupers of a settlement, where there is nothing either at the common law or by the statute of William, which makes such a contract void.

It is not necessary that the master should have a settlement.

Master's residence not material.

Where the father had no settlement the sessions conceived that he could confer none on his daughter by hiring and service. But the whole court agreed that a settlement may be gained by serving a man who has no settlement himself, because the servant does not derive the settlement from the master but from the service. (*Missenden v. Chesham, 2 Bott, 173.*)

Rex v. Eldersley, 2 Bott, 274. A. hired himself to be a warrener in the parish of Eldersley, in a warren there, to joint occupiers of it, who lived in

two parishes distant from the parish of Eldersley. He dieted and lodged for eight weeks with one of the occupiers, and for the rest and last part of the time on the warren. *Per Curiam*, "His settlement is in Eldersley."

In *Rex v. Sandhurst* (7 B. & C. 557; 1 M. & R. Mag. Ca. 65), it was urged that the hiring having been by an officer of a public establishment which was exempted from poor rates, and that as the pauper was to serve the officers of the establishment and the young gentlemen there, and was not hired by or to serve a private individual, this distinguished it from the common hiring; but *Bayley, J.* in giving the judgment, said, "It has been urged that the party is to be considered as holding an office and not as a servant. But a man who does all the menial offices of a servant and is at the command of the persons in the establishment is a *servant*, and not an officer. We think the legislature did not mean to make any distinction between one description of hiring and another by a particular description of persons."

The turnkey of a gaol is not a servant so as to gain a settlement. (*Rex v. Sparsholt*, 6 Nev. & M. 8.)

Rex v. Houghton-le-Spring, 2 B. & Ald. 375. William Cowell being a single man at the time, duly executed, together with sixty-one other persons, a deed, which purported to be an indenture, whereby it was witnessed, that they whose names or marks were thereunder written and seals affixed, in consideration of a shilling a piece then received, and of certain wages to be paid to them, had hired and bound themselves to T. Croudace and S. Watkin, and their heirs, to be their servants, &c., from 18th October, 1805, to 18th October, 1806. This deed was executed by W. Cowell, but was not signed by either of the masters, or any one on their behalf. Cowell duly served under the deed. *Bayley, J.* "The only question is, whether the execution of the indenture by the servant only is sufficient to constitute a valid contract of hiring. Now in order to do that, there must be an obligation both on the part of the servant and of the master: here it is admitted, that the execution by the servant bound him to serve for a year; and the objection is, that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept the service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in *Co. Litt.* (230 b. note (1)), that a party who takes the benefit of a deed is bound by it, although he has not executed it. But the sessions have not found the fact that the master had this knowledge; and although it is probable that they would have found it, still, having stopped the case *in limine*, it must now go back to have the case determined. Their proper course would have been to have received the deed in evidence, and then to have permitted the party to have proved such facts, from which the knowledge of its contents by the master, and his acceptance of the service on those terms, might be inferred." *Holroyd, J.* concurred. (*Rex v. Arnesby*, 3 Bar. & Ald. 584, *post.*)

1. Of the Contract of Hiring.

The hiring may be by a public body, and by persons not rated to the poor.

If the contract be by deed, it is not absolutely necessary that it should be executed by the master as well as the servant.

The Hiring must be the Contract of the Pauper Himself.

Rex v. Rickinghall Inferior, 7 East, 373. The pauper was a Greenwich pensioner, and came disabled to Redgrave. The parish officers, in 1801, agreed with R. Crowe, of Rickinghall Inferior, that the pauper should live with him, and do whatever he should set him about, and that they should pay 2s. 6d. a-week with the pauper. At Easter, 1802, the parish refused to continue the allowance, and thereupon Crowe sent the pauper to Redgrave, whence he returned to Crowe; and, without any express agreement, continued to live in the same manner as before until October, 1804. The court (Lord *Ellenborough, C. J.*, absent,) were clearly of opinion that no settlement was gained. The relation of master and servant never existed between the pauper and Crowe; and the parish officers had no authority to hire out the pauper to the other; and after the allowance was withdrawn Crowe permitted the pauper to live with him out of charity, without any contract as between master and servant.

A pauper, hired out by parish officers, cannot by such hiring gain a settlement.

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Compulsory hiring, and service under it, gains no settlement.

Rex v. Stowmarket, 9 East, 211. The pauper, of the age of fourteen, was in the house of industry of Stowmarket, the guardians whereof were empowered by their incorporating act to apprentice poor children for seven years. It did not appear that they had ever exercised this power, the practice being to send the children to their respective parishes; the pauper was sent to Mr. Reynolds, of Stowmarket, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one Fox, of Coddendam. The pauper did not object, conceiving he had no discretion on the subject, and he went to F., who received him, and told him he would give him clothes, and that he was to stay with him a year. The pauper did stay the year, receiving clothes, maintenance, and a little pocket-money. (a) Lord *Ellenborough*, C. J., "All the parties seem to have acted under the idea that the boy was a parish slave, who might be handed over from one to another, and disposed of as they pleased. But there was no agreement by him to the services: he submitted to them because he thought himself obliged to do whatever they bid him. If we were to hold this sufficient to give a settlement we should establish a new head of settlement *by allotment*. The law gave the directors a power to apprentice out children, and instead of executing that power in a proper manner, they assume to themselves a power to hand these children over to the officers of the respective parishes, who again hand them over to others; and so they are shifted from one to another. And now, because the boy has done the work they made him to do, and eat the meat and worn the clothing which were provided for him, it is argued that he has adopted so many contracts of hiring to which he was no party, which were made without any consideration of his will or consent. But the adoption of a contract must be the act of a free agent; and at what period of time is he found to have consented or contracted at all? On the contrary, it is stated by Reynolds that he had procured a service for him with Fox; the pauper made no objection, conceiving that he had no discretion on the subject. Again, it is stated that the pauper made no agreement with any one respecting wages, or the nature or duration of his service: nor was he consulted on the subject by either of the persons to whom he had been allotted; but considered himself obliged to accept those services, as being under the control of others. Then can a person who is considered as a slave, and conceives himself to be such, be considered as having *adopted* the acts of his master? It is against common sense so to construe his involuntary acquiescence. In those cases where the pauper's misapprehension of the contract has been held not to vary the legal effect, the pauper meant to exercise a contracting power, though he mistook the legal effect of it."

A poor boy hired himself; the overseers of his parish afterwards assist him with clothes: Held, that he acted *suo jure*, and gained a settlement.

Rex v. Dunton, 15 East, 352. The pauper, previously to Mich. 1809, went to one Eastwood, in East Horndon, and worked for him for some time for 6d. a-day, and was afterwards taken into Eastwood's house, where he lived two years in his employment. On leaving Eastwood's service (by which no settlement was gained, as the pauper was sent into it by the overseer of Dunton without any act of his own), and in his way to Dunton, he was met by a labourer, who said to him, "Do you want a service? you would suit Smith:" Smith being in the field at the time, the pauper applied to him, when Smith said to him, "Are you willing to go with me, and bind hay or thatch, or do whatever else you are bidden?" The pauper said he was willing, and Smith took him home to his house in Ingrave. This happened a little before Mich. 1809, and the pauper was then about sixteen years of age: nothing was said about wages, nor was any other agreement made between them. A day or two afterwards Smith said, "I see you are in a bad state about clothes: if you cannot get clothes I cannot keep you." The pauper replied, "Mr. Maunder, the overseer of Dunton, will find me in clothes." On the next day the pauper and Smith went to Maunder, when Maunder undertook to provide clothes, and asked Smith, "What he would

(a) He was allotted a second time, and served in the same way.

give him a-week?" Smith engaged to pay one shilling a-week to Maunder for the parish on account of clothes found. The overseer then gave an order for the clothes that the pauper wanted; Maunder, in the presence of Smith, asked the pauper if he went willingly into Smith's service; the pauper replied that he did. Smith, during the service, occasionally gave the pauper small sums. About four months after the pauper had been in the service of Smith, the latter, unaccompanied by the pauper, and without his knowledge, went to the overseer, and told him that he could not keep the pauper any longer, if he was to pay the one shilling a-week. The overseer released Smith from the payment, and the pauper stayed the year out in Smith's service. At Michaelmas, 1810, Smith said to Maunder that he would have the pauper no longer without fresh clothes, to which Maunder said that he must wait till the town meeting, which would take place in a fortnight. The overseer then asked the pauper if he was willing to live with Smith another year: he said that he was willing, as he used him very well. The overseer asked Smith to make him some allowance, Smith promised to give him a pair of shoes, and do the best he could for him. The pauper served the second year with Smith, who gave him a pair of shoes, and laid out 1*l.* 8*s.* 6*d.* in the purchase of clothes for him. (a) *Grose, J.*, "The question is, whether the contract was made by the master with the boy, or with the overseer? Now, the boy offered and declared himself willing to serve the master, and the master agreed to take the boy before any intervention of the parish officer: and though facts are afterwards stated, to show that reference was made to the officer, yet that was only to enable the boy to make the contract, by getting clothes from the overseer, without which the master refused to keep him." *Le Blanc, J.*, "Here there was an original agreement for hiring and service between the boy and his master before the overseer knew any thing of the matter: how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter? The law, indeed, says that an overseer cannot contract with another for the services of a pauper without his consent; but there is no law which says that an overseer may not furnish a pauper with clothes, to enable him to make a contract of hiring with another." *Bayley, J.*, "The boy acted throughout *suo jure*: he chose his own master, and fixed his own terms, and therefore I see no objection to his gaining a settlement under the contract of hiring made by him."

2. What amounts to a Contract of Hiring and Service. (b)

"Shall be lawfully hired into any parish or town for one year."] *The King v. Sparsholt*, 6 *Nev. & Man.* 8. There must have been the relation of master and servant; therefore a turnkey of a public gaol, appointed according to public regulations, and at an annual salary, is not a *servant* either to the justices or the keeper, so as to be able to acquire a settlement by hiring and service.

It is sufficient if the contract of hiring be made in an extra-parochial place. The words parish and township are only put for example. (*Rex v. St. Peters in Oxford*, *Fol.* 193; 2 *Bott*, 268.)

Hiring may be in an extra parochial place.

The contract must be lawful, and obligatory on the master to employ, and on the servant to serve; if either is not bound the contract is imperfect.

Rex v. Whitnash, 7 *B. & C.* 596; 1 *M. & R. Mag. Ca.* 177. The pauper was offered by his father to C., a farmer, on a Sunday, as waggoner's boy, and was hired on that day for a year, and served him for a year. *Bayley, J.*, having observed on the policy of 29 *Car. II.* c. 7, s. 1, said, "This act does not prohibit business of every description, and I am of opinion that the hiring of a servant by a farmer on a Sunday is not work or

A contract of hiring, made on a Sunday by a farmer, is lawful.

(a) What will amount to an adoption 370, *post.*
by the son of a contract made by the
father, see *Rex v. Burbach*, 1 *M. & Sel.* 331.

(b) See division of the subject, *ante*,

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business within the statute. I also think that it is not 'labour, business, or work of the ordinary calling' of the farmer. He, like every other person who requires servants, must hire them. The true construction of the words 'ordinary calling' seems to me to be, not that without which the trade or business cannot be carried on, but that which the ordinary duties of the calling bring into continued action. Those things which are repeated daily or weekly in the course of trade are parts of the *ordinary calling* of a man exercising such trade or business; but the hiring of a servant once in a year does not come within the meaning of those words." *Holroyd, J.*, said, "If a farmer sowed his corn, or the servant ploughed his land on the Sunday, these would be parts of their ordinary calling. But I think the making of a contract with a person who is to assist another in his ordinary calling, does not come within the statute, so as to subject the parties to a penalty, or to avoid the contract." *Littledale, J.*, gave judgment to the same effect.

There must be a contract.

Gregory Stoke v. Pitminster, 2 *Bott*, 269. The pauper, who was a young girl, was sent to by a relation, who told her that if she would live with her she should have her meat, drink, washing, and lodging. The pauper accepted the terms, and lived with her four years as a servant. It was insisted that this amounted to a general *retainer* (within the statute of labours, 24 Ed. 3, c. 1,) for a year, and that the actual entry into the service, after being sent to, and terms offered, was such an assent as amounted to a *contract*. But the court held that *there must be an actual contract* where the servant is under no obligation to stay, and the contract must be *mutual* to bind the parties, and that this was no agreement, but an encouragement to the pauper that if she would live with the relation she would maintain her. See in *Rex v. Lyth* Lord *Kenyon's* remarks on this case.

Rex v. Thames Ditton, 4 *Doug.* 300; 2 *Bott*, 272. The pauper was bought as a negro slave in America, and brought to England, and lived in Thames Ditton with her master till he died, and after that with his widow and executrix. Lord *Mansfield*, "The poor law is a system of many acts of parliament. It began in the time of Queen Elizabeth; perhaps before villenage was out of use. Villenage in gross may not now be abolished; but none of those statutes apply to villenage. The legislature never thought of it. To give this pauper a settlement, she must come within the description of a positive law. Her being a black or a slave is no objection; but the statute requires a *hiring*. There is none here; and therefore the case is not within the statute."

It must be a contract for service, a contract for service (a) and cohabitation is insufficient.

Rex v. Northwingfield, 1 *B. & Adol.* 912. The pauper was *bonâ fide* hired as a housekeeper by H. H., in Northwingfield, in October, 1810, by an agreement in writing, for a year, at 40*l.* per annum wages. She entered into the service in pursuance of her agreement, and stayed in the same (in the appellant's parish) until February following, when Mrs. H. returned home, and she then left. Some time after she had been in Mr. H.'s service she began to sleep with him. No agreement was made on this subject before she came into the service. She performed all the duties of a housekeeper, and lived with the other servants, and sometimes paid for articles wanted in the house, and was repaid by Mr. H. Upon leaving Mr. H.'s she went to London; and shortly afterwards Mr. and Mrs. H. came to London, and he hired her a second time, by a written agreement, for a year, as a servant, at the same wages as under the first agreement. According to this contract, she entered again into Mr. H.'s service in the appellant parish, and served him there for many years, and until he died; living in and managing his house, and superintending his servants precisely as under the first hiring. She received her wages, but at times, from necessity, expended a part of them in paying the expenses of Mr. H.'s house, and she provided herself with clothes. The former cohabitation between her and her master was continued. The second written agreement having been lost, and the loss of it proved, the pauper gave parol evidence of the terms of it to the effect be-

(a) See *Rex v. Sparsholt*, 6 *Nev. & Man.* 8, ante, 345.

fore stated. The appellants then proceeded to cross examine her, for the purpose of proving that the contract of hiring was founded in part upon the pauper's agreement to cohabit with her master, in which case the hiring would be *turpis contractus*, and could not confer a settlement. The respondents objected that no evidence ought to be received of a consideration that did not appear upon the written agreement; and the court concurred in the objection, and refused to receive the evidence. The question reserved was, whether the evidence ought to have been admitted or not. Lord Tenterden, C. J., "This contract may have been either a contract for service, or for cohabitation, or for both. In the first case a settlement would clearly be gained by a service under it, in the second it would be clearly void, and no settlement could be gained. If it were for both, then it is said that the contract is divisible, and good for so much as is legal; but void for the residue. As to that, it is unnecessary to say any thing at present. The evidence should have been received, to ascertain the nature of the contract; and the case must therefore be sent back to the sessions for that purpose." Case sent back to the sessions.

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Rex v. St. Mary Guildford, 2 Bott, 273; and *Rex v. Wrifield*, Cald. 521. T. Full, at the age of eleven or twelve, went to live with his uncle, who was a tailor, in South Mims, and worked for him, and learned his business. At the expiration of two years his uncle proposed that he should become his apprentice, but they had some difference about it, and the pauper refused to be bound. However, he continued to live with him, working in and learning his business, till about the age of seventeen, and was provided with board, lodging, and necessaries. This case came on immediately after *Rex v. Thames Ditton*, (2 Bott, 272, ante, 346); and the counsel said, as the court had declared in that case that a hiring was necessary, it was impossible for him to support this settlement. The court said a hiring was certainly necessary, and that this was clearly no settlement.

A boy living several years with his uncle, and working at his trade for his board, clothes, &c., but without any contract, does not thereby gain a settlement.

Rex v. Weyhill, Burr. S. C. 491; 2 Bott, 271. R. Pyke, Esq., took the pauper (being then about eight years of age) into his family from charity, and gave him meat, drink, lodging, and clothes while he continued with him, which was about six years, of which the last four years were in Weyhill. Neither at nor before the time of Pyke's taking the pauper into his family, nor at any time after, was there any contract between the parties, in relation to the pauper's service of Pyke, or his continuance with him, or to any wages or other gratuity to be paid to him; during his continuance with P. he was employed in running of errands, and doing whatsoever P., or his servants, thought fit to bid him: no wages were ever paid or given to him: in the pauper's apprehension he was, during all the time, at liberty to quit P., or P. to turn him off, as either party should think fit. The court said, it is clear here was no hiring at all; no contract; but he was taken, out of charity, a child eight years of age, to run on errands, and do whatever he was bid, and left Mr. Pyke when he came of fourteen years of age, and was capable of doing more service. And it is expressly stated that there was no contract. Indeed where there is a hiring stated, the court will presume it to have been a regular one, unless the contrary appears; and that was the case of *Rex v. Wincaunton*, Burr. S. C. (post, 299); a general hiring was there stated; but here was no hiring at all.

If it appear that there was no contract, no hiring can be presumed; but where a contract appears, it will be presumed to have been regular, till the contrary is proved.

Rex v. Rickinghall Inferior, 7 East, 373. See this case, ante, 343, on another point. The facts as to the contract appeared to be that the pauper, after the parish officers of Redgrave had refused to continue the allowance, promised by them to the person with whom he was placed, was by that person sent home to Redgrave. He then returned, and lived with the same person without any new agreement; he frequently absented himself, sometimes with, sometimes without leave; he sometimes received 6d. for jobs done on Sundays, but on applying for relief to Redgrave they gave it to him. And the court said here was no settlement gained; for after the parish withdrew their allowance the pauper was permitted to live at Rickinghall out of charity, without any contract as between master and servant.

Rex v. St. Matthew's, Ipswich, 3 T. R. 449. E. Stollery and wife were An assistant to a

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waiter at an inn, without agreement with the innkeeper, does not gain a settlement by such service.

removed from St. Nicholas to St. Matthew. Order confirmed. Case:—About five years ago, the waiter belonging to S. Ribbands, who kept an inn in St. Matthew's, being ill, sent for the pauper to assist him at the inn, where he staid *as helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent to the pauper *to help him*, which he did; and he continued in the inn as boot-catcher for nineteen months, during which time he lodged and boarded there, and was to be satisfied by the gentlemen who came to the house. Ribbands knew of his being there the night after he came; but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of Ribbands till about July in the next year, when he went away, and the pauper continued there till Christmas following, when Ribbands and the pauper having some dispute, Ribbands told him to go away, upon which he asked for something for the time he had been there: Ribbands replied, he should not give him any thing, as he had made no agreement with him; but on being pressed again, Ribbands gave him two guineas, and the pauper left the house. The pauper considered himself not as a servant to Ribbands, but as assistant to the waiter, and thought himself at liberty to go away when he pleased; he saw Ribbands sometimes, who, if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands. Lord Kenyon, C. J., "There never was a case like the present, in which a hiring was presumed by retrospect. To some of the positions which have been laid down at the bar I perfectly accede; as that there is no necessity for an hiring by the master himself; that if there be an hiring, it shall be presumed an hiring for a year, unless something appear to show that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of Ribbands: now that is expressly negatived by the facts of the case. And here the question arises, upon the determination of which this case must turn—in what situation the pauper was at that time? The case states, that he came there *as helper to the waiter*; and there is nothing in the case from whence we can infer that he was the servant of Ribbands. Therefore, down to the time when the waiter went away, it is impossible to say that there was any agreement between Ribbands and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with Ribbands; but that is not sufficient to give a settlement. If, indeed, the pauper had been before in Ribband's service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with Ribbands, either express or implied, until the last six months. *Rex v. Weyhill* (*ante*, p. 347) is not unlike this: there, indeed, the pauper was taken out of charity; but in that, as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the court will raise such implication; but the nature of the service here implies the reverse." Orders quashed.

Rex v. Stokesley, 6 T. R. 757. J. Pickering was removed from Ovingham to Stokesley. Order confirmed. Case:—The pauper was born in Corbridge, a bastard, and was taken by his mother to Stamfordham, and was kept by her there till she died, at which time he was about six years old; he then went to live with her brother, a small farmer, at Sedgfield, as a *relation, and not under any hiring*, being then about seven years of age, who set him to drive his plough soon after he went, and he continued working at the farm about eight years, but received no wages or other reward except meat and clothes, and he and his uncle wrought all the work of the farm during the last three or four years of that period; the pauper having some difference with his uncle a little before May-day, went to Darlington hiring, and there hired himself to Mr. Lax, to be a servant in husbandry for one year, and served the same; shortly before the end of this service, he received a letter from his uncle, requesting his return to him, and saying that if he would come and live with him *as before*, he could surely make it as good or better for him than a common service. During the year he was with Mr. Lax, his

If a person go to live with a relation, "as such, and not under any hiring," and afterwards go to live with him *as before*; this is no hiring.

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uncle had no regular hired servant, but employed a day-labourer to do such work for him as he did not like to do himself, and which the pauper used regularly, year after year, as he grew in strength, to do for him. Agreeable to his uncle's request, he returned, and lived with him about three years, and then went with his uncle to Stokesley, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant, and was an elderly infirm man. When the pauper returned to his uncle he made no agreement with him, either for what time or for what consideration he should serve him, but his uncle often promised him, if he would stay with him for his life, he would leave him his stock, crop, and farm, as his own; his uncle's son having got a good place, and being well provided for; his uncle of course found him meat and clothes, and used to give him a few shillings when he went from home, but nothing more. He left his uncle about Martinmas, and believed himself at liberty to leave him at any time: when they parted they had no reckoning, and did not part friends. Lord Kenyon, C. J. "The argument addressed to us, viz. that, as in *Rex v. Lyth* (*infra*), if there be a service in fact, of such a nature as that usually performed by hired servants, it is presumptive evidence whereon to found a constructive hiring; that this was such a service; that the pauper was solicited to go; that he was independent when he went the second time; might have had a good effect if addressed to the quarter sessions, but it cannot have any weight here, because the facts stated in the special case negative any hiring: indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service: they also state that before the pauper returned to his uncle, the latter proposed to him *to come and live with him as before*, that is, in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices in this case had found that there was a yearly hiring, it would have concluded the case; but here they have expressly found that the first service was not under any hiring, and that the second was *as before*, and we cannot contradict these facts, and introduce our own conjectures on the subject, in opposition to this finding." Order of sessions quashed.

3. Where a Contract may be implied. (a)

Rex v. Holy Trinity, in Wareham, Cald. 141; 2 Bott, 481. Order of removal from Poole to Wareham confirmed. Case:—The pauper's husband was abroad, and had been beyond sea for two years past, if alive. To her knowledge he lived in the capacity of an ostler with Mrs. Lee, in W., some years since deceased, for about two years, where she had seen him brew: but whether there was any agreement relating to such service was not proved, but she had heard her husband (b) say he was settled at Wareham. By Lord Mansfield, C. J. "The sessions have drawn their conclusion that he was hired; and I think they have done right." Buller, J. "Though the evidence is slight, there is nothing to contradict it." Willes and Ashhurst, Js. concurred.

The ostler's case.
Where a person had lived with another as ostler for two years, and had been seen in menial service there, a yearly hiring was presumed.

Rex v. Lyth, 5 T. R. 327. T. Carling was removed from Whitby to Lyth. Order confirmed. Case:—The respondents proved that the pauper was the legitimate son of W. and M. Carling, and born in Lyth. The appellants, in order to show a derivative settlement in the pauper from his father in a third parish, proved that W. Carling, before his marriage, was, a few days after Martinmas, 1731, seen and known to be in the service of one Campion, in Barnby, as a servant in husbandry; and was from time to time seen and known to act in that capacity with Campion for some time, upwards

Husbandman's case.

If it be proved that a person was seen and known to be in the service of another, as servant in husbandry for a year, a yearly hiring will be presumed.

(a) See division of the subject, *ante*, ble. (*Rex v. Ferry Frysture*, 2 East, 331. 54, *post*; and *Rex v. Nuneham*, 1 East, 373, *contra*.)

(b) Such declarations are not admissi-

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of a year. The appellants offered to prove that Campion, who was then long since dead, had declared in his lifetime that W. Carling had been hired with him for a year: but the sessions were of opinion that such evidence was not admissible. Evidence of declarations to the same effect by W. Carling, who is also dead, touching such hiring, was also refused. Whereupon the sessions, being of opinion that there was no evidence of a hiring, confirmed the order, subject to the opinion of the court upon the propriety of rejecting the evidence offered of the declarations of Campion and W. Carling; and also whether, after rejecting such declarations, they had done right in refusing to infer the hiring from the fact of service proved. Lord *Kenyon*, C. J. said, "The case was drawn up in too loose a manner for the court to give any solemn judgment upon it: for in some parts of it evidence was stated instead of facts; and the court were left to draw inferences which the magistrates below ought to have done. But that if the sessions wished to know whether, from the evidence stated relative to the hiring of W. Carling, they were at liberty to draw the conclusion of his having been hired for a year; in fact, the court had no hesitation in thinking that they might legally draw such an inference. He, therefore, thought this advice of the court might be given to the magistrates without the necessity of entering any regular judgment upon this case as it now stood, or putting the parties to the expense of stating the case again." The *Rex v. Pitminster* was cited: but Lord *Kenyon*, C. J. said, "That it appeared that the pauper was taken out of charity; and, therefore, the presumption of a hiring was taken away. But this is the case of a servant in husbandry, whose service for a year affords very strong presumptive evidence of an hiring for a year. But, however strong that presumption be, as only the evidence of hiring is stated, and not the fact itself, we cannot decide upon the case: though the sessions must be directed to draw from this evidence the conclusion that W. Carling was hired for a year." Case sent back.

If a person go into a service upon liking, and at the end of the year is paid by the year, and continues in the service afterwards, a yearly hiring may be presumed.

Rex v. Hales, 5 T. R. 168. Martha Mitchell was removed from Hales to Wrentham. Order quashed. Case:—The pauper, a fortnight after old Michaelmas, 1792, heard from Miss Garnham that her father, a farmer, wanted a servant; and the pauper agreed with her to go to him a month upon liking; she went accordingly; and in the spring following Miss Garnham told the pauper that if she behaved well, and did her work properly, she should have 4*l.* for a year. The pauper continued in his service without any other agreement until the Christmas following, when she went away; but a fortnight after Michaelmas, 1793, she received 4*l.* for a year's wages then due; and for the remainder of the service from that time she received 1*s.* 6*d.* a-week, being the proportion of wages then due at the rate of 4*l.* per annum. Lord *Kenyon*, C. J. "At present the case is so imperfectly stated, that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement; but as the pauper continued in the same service after the expiration of the first year, there was abundant ground for the justices to have presumed a hiring for a year from that time. However, as the fact is not stated one way or the other, the case must be sent back, when most probably the justices, after hearing the intimation of this court, will find the fact of a hiring for a year, which will put an end to the case." Case sent back.

A hiring for a year may be presumed from a service for four years.

Rex v. Pendleton, 15 East, 449. The pauper was in 1782 engaged as a servant to Messrs. Douglas & Co., of Pendleton, by "Articles of agreement made the 24th of June, 1782, between T. and W. Douglas, of Pendleton, on the one part, and J. Jebson, cotton-worker, on the other part, and J. Longden (the pauper), of the other part, witnesseth that J. Jebson hereby covenants and agrees duly and faithfully, and J. Longden hereby agrees duly and faithfully, to serve T. and W. Douglas in the capacity of cotton-workers, during the term of three years, night or day; and T. and W. Douglas agree to pay unto J. Jebson 5*s.* 6*d.* per week for the first year, and to J. Longden 6*s.* per week for the first year, 7*s.* per week for the second year, 9*s.* per week for the third year, in consideration of his faithful services; and whatever time J. Longden or J. Jebson shall be absent from their work, it shall be propor-

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tionably deducted from their wages. The present agreement to remain in full force for three years. And for the performance of this agreement, J. J. and J. L. bind themselves and their executors in the penalty of 100*l.*" (The instrument was signed and sealed by the respective parties, but was not stamped.) The pauper served Messrs. D. & Co. during the time stated, and continued on in their service for four years more without any thing further being said as to wages, and without any express engagement as to the time or conditions of such service. The sessions were of opinion that a hiring might be presumed. Lord Ellenborough, C. J. "The fact of the service is always capable of distinct proof, for it is collateral and subsequent to the contract itself. The pauper served, that is a fact to be proved by parol evidence; he served T. and W. Douglas at Pendleton, that is also proved by the fact; he served them there during three years, which is a shorter way of expressing that which the sessions meant to find as to the time of the service, by referring to the time mentioned in the instrument; and he afterwards continued to serve them for four years longer; he served without any thing being said as to wages. The stress of the argument seems rather to show, that there were no certain wages reserved, and that there was no hiring for a year, for if there were only a general hiring, the law presumes that it is for a year, and if the rate of wages were not specified, he would be entitled to reasonable wages. Then were not the sessions warranted from the fact of a service of four years at wages, though not specified, to presume that it was under a hiring for a year? the law says, that they may make such a presumption when there is nothing to repel it, and that makes an end of the case." *Le Blanc*, J. "For any thing which appears to us, the sessions received the evidence of the written instrument without objection made to it at the time; for if they meant to state the question reserved by them, to be whether that evidence was properly received, they would have stated that objection was taken to it, and asked the advice of the court on its admissibility. But as far as we can see, the evidence was received without objection, and the facts stated in the instrument are joined on with the other evidence, which, without reference to the instrument, would probably have been stated more fully, and the pauper would then probably have proved that he had served, in fact, for four years after the expiration of the articles, having before served for three years under them, and received wages at the rate of so much a week during that time; and then the sessions would have sent to us to know whether they could, from that evidence, putting the written instrument quite out of the question, have presumed a hiring for a year. And how can we say that they could not so presume?" *Bayley*, J. "It has been argued here, that inasmuch as the pauper served for some part of the time, at least, under a written instrument unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties, for such is the general import of the stamp acts, yet the court may look at it to see whether it applies to other evidence of a contract between them; as if a contract in writing be made, not stamped, for the sale and delivery of certain goods, on certain terms, the court, in an action for the non-delivery of goods upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recovered for; and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the subsequent services to which it did not apply." Orders confirmed.

Rex v. Long Whatton, 5 T. R. 447. The pauper (a lunatic at the time of removal) went in March to live at Diseworth with Mrs. Lowdham, to wait upon Mr. L., who was poorly. She continued there till the death of Mrs. L., which happened two or three years after. She was seen during that time constantly acting as the servant of Mrs. L. On her first going to Diseworth the pauper had told her brother-in-law that she was hired till the following

If a person, hired for less than a year, serve for three years, a contract for a year may be inferred.

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When a hiring may be implied from service.

Michaelmas, with liberty to part on a month's wages or a month's warning. At another time she said, on being asked, that she belonged to Diseworth, where she had been hired, and had received 2s. 6d. earnest, but never mentioned any second hiring. These declarations were objected to; but the sessions received them, and were of opinion, upon the whole evidence, as well those declarations as the rest, that she gained a settlement at D. Lord Kenyon, C. J. "Independently of the declarations of the pauper, there was sufficient evidence to warrant the justices in finding a hiring for a year in D. Though the pauper were at first hired only till the Michaelmas following, yet she continued in the same service for three years." The counsel not desiring to have the case sent back the order was confirmed.

Rex v. St. Martin's, Leicester, 8 B. & C. 674. The pauper, being then about fourteen years old, went with his father to the house of one Neale, an innkeeper, in the parish of St. Martin, and informed N. that he heard he wanted a lad. N. answered, "he had got one coming in a fortnight, but that the pauper might stay for that fortnight, till the other lad came." The pauper was to fill the situation of boots and tap-boy, and had his board and the vails. At the end of the fortnight the other boy came, but was not hired, and the pauper continued in the service (without anything following between him and N.) for three years and a quarter, when he went and engaged with another master without consulting N. and removed the following day; N. telling him "that if it was his mind to go he believed he must." The sessions found this to be an implied hiring. Bayley, J. "I think that the justices were warranted in coming to this conclusion. If N. had said no more than that the boy should have board, lodging, and the vails, the law would have implied a general hiring; but he assigns a reason why he could not engage him for more than a fortnight. At the end of that time the pauper continued in N.'s service. The question then for the justices was whether the relation of master and servant was created between them, and for what time; that depended on the understanding existing in the mind of the parties at the time. Both parties understood that the relation of master and servant was created for a fortnight in the first instance. If the justices thought that the master refused to take the pauper for a year, only because he expected another boy, they might, as that boy was not finally hired, taking into consideration the conversation between the pauper and master, and the subsequent service, presume a contract for a year; they might, most properly, have so presumed, if nothing had been said in the first instance of another boy coming in a fortnight. If the conversation, omitting all mention of another person being expected, coupled with the subsequent service, would have been sufficient to raise a presumption of yearly hiring, the justices might think that as the expected person was not hired, both parties intended the relation of master and servant to continue for that period. *Rex v. Pendleton* is in point." Littledale, J. said, he should have drawn a different conclusion from the facts; but he thought the decision of the justices ought not to be disturbed. Parke, J. concurred. Order of sessions confirmed.

The relation of the parties may rebut the presumption of hiring.

Rex v. Sow, 1 B. & Ald. 178. Order of removal from Coundon to Sow, confirmed, &c. Case:—The pauper was hired in November, 1812, by the wife of Mr. Deeming, of Sow, for a year, at 50s. wages, and what clothes Mrs. D. pleased. Previously to this hiring, the pauper, who is a natural daughter of Mr. D., lived with her mother at Kearsley, and the hiring was for the purpose of gaining a settlement in Sow. As soon as she was hired she went into the service of Mr. D. served him for a year, and continued to live with him until the month of July, 1816, when she went away; during the whole of which time she did the household work, as she did during the first year, but no conversation took place between the parties about hiring after she was hired in November, 1812, and there was no second hiring, unless from continuance in the service of Mr. D. a hiring ought to be implied, which in the opinion of the sessions it ought not. Some months after the expiration of the first twelve months, Mr. D. gave the pauper 5l., 50s. thereof for the first year's wages, and desired her to keep the remaining 50s. and say nothing about it. The pauper never afterwards received any sum

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on account of wages, but received at different times clothes and pocket-money. Mr. D. at Lady-day, 1816, removed with his family to Coundon: the pauper removed with them, and continued to live with them there till the month of July. There was no fraud in this case. Lord Ellenborough, "I cannot set the sessions more right than they have set themselves. The pauper was hired for a year, and 50s. were paid her; that was paid with another sum, and there is no question that the one sum was paid as wages and the other as bounty; it is true the service continued the same, but there was not any hiring for the second or any subsequent year." (a) Bayley, J. "I think the sessions have done perfectly right; where the parties are not related, it may fairly be presumed from a continuance in the service, that the terms in which they continue are the same as during the preceding year. But where the relation of father and child subsists, the ground for that presumption fails, and here there are a variety of circumstances to show that there was not any new hiring. The parties lived during the second year upon different terms from what they lived during the first." Abbott, J. thought the sessions right, inasmuch as after the first year the pauper was living as a child with her parent, and not as a servant with her master. Order confirmed.

A child may by express consent be hired as a servant by a parent. (*Rex v. Chillesford*, ante, 340.)

A general hiring may be a hiring for a year, or it may be for less than a year. If there be a general known custom in a parish to hire servants for less than a year, the general hiring would be for the customary period, and not for a whole year. Bayley, J. (*Rex v. Bottesford*, post. See also *Rex v. Tyrley*, post, 357, and *Rex v. Keele*, post.)

Presumption may be rebutted by the custom of the country.

4. Where the Contract is indefinite.

4. Where the contract is indefinite.

Where the relation of master and servant has existed in such a manner that a hiring for a year may have been entered into between them, the law will adopt such an inference unless it can be rebutted by opposing evidence. The stipulations, therefore, as to time or wages may justify the conclusion of a yearly hiring, although they do not expressly include that period.

Rex v. Wincaunton, Burr. S. C. 299; 2 Bott, 289. The pauper, of the age of seventeen, offered to serve S. Williams, of Charleton Horethorne; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and clothes, when wanted; but no particular time was agreed on, and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure; nevertheless, there was no agreement for that purpose. The boy continued and served him in Charleton Horethorne two years and a half. By the court: "He gained a settlement there by this service. A general hiring is a hiring for a year. And here are no circumstances in this case to show an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it." (*Rex v. Weyhill*.)

A general hiring, and no time mentioned, implies a hiring for a year.

Hiring to serve in husbandry. (b)

Rex v. Berwick St. John, Burr. S. C. 502; 2 Bott, 290. The pauper met Mr. Jones, head keeper of Rushmore Lodge, in Berwick St. John, who had then lately parted with one E. Hill, who had been for many years one of his servants, or under keepers, at the wages of 3*l.* a year, and a keeper's livery, besides meat, drink, and lodging. Jones said to the pauper, "Do you like the life of a keeper?" Which being answered in the affirmative, he said, "Then go into Ned Hill's place, and you shall want no encouragement." Accordingly he went, and continued in the service for three years,

Telling a person to go into the place of one who had been a yearly servant, is ground to imply a hiring for a year.

(a) See *Rex v. Crediton*, 2 B. & Ad. 493, post.

(b) In *Rex v. Tyrley*, 4 B. & Ald. 624, where the pauper hired himself for 8*l.*, and no time specified. He entered the service the day before New Year's Day,

and left it two days after Christmas Day. The session found this to be a general hiring. Abbott, C. J. said, "the court were bound by this finding, but that he should have come to a different conclusion."

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Where no mention is made of time or of wages, and the service is for a year, a hiring is presumed.

An indefinite hiring is to be considered as a hiring for a year, and the apprehension of the master and servant makes no difference.

and received three years' wages. By Lord Mansfield, C. J. "This man served three years, and received wages accordingly. But it is objected that he was never hired at all. It is admitted that if he were hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring, for Hill was a hired servant."

Rex v. Stockbridge, Burr. S. C. 759; 2 Bott, 294. The pauper asked M. Nicholas if he wanted a boot-catcher and driver? And N. said, yes. The pauper replied, he was willing to serve him; and N. bid him "go into the yard and look after the horses;" nothing else passed, and no term was mentioned. He went into the service, and continued in it for one year; and was found by his master in meat, drink, and lodging, but received no wages. He was afterwards hired to J. Watts, of Basingstoke, "to be a chaise driver," but no term was mentioned. He served him for a year there, being found by him in meat, drink, and lodging, but received no wages. He thought himself at liberty to leave either of these masters whenever he pleased. It was proved that the customary manner of engaging chaise-drivers is as the pauper stated; and that the masters and drivers think themselves at liberty to part whenever they please. The sessions thought that the pauper gained no settlement; but the judges were of opinion that this was a sufficient hiring for a year. *A general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary.* And nothing is here stated which limits the hiring, or shows that it was meant to be for less than a year.

Rex v. Seaton and Beer, 2 Bott, 297; Cald. 440. S. Ponsford, who kept a public house at Broadclift, agreed with the pauper that he, Ponsford, should give him, the pauper, one shilling a-week, as he had given the other man or men, and the vails of the stables. Nothing was said about time. At the end of the year his mistress said to him, "You have been here a year, I will pay you." To which the pauper answered, "It is no matter, I may stay with you another year." She said, "Very well, Sampson." He did stay another year, and then received what was due to him, being 5*l.* 4*s.*; he worked in the stables as an ostler, and neither at the time of making the first agreement, nor at the end of the first year, was any mention made, either by the mistress or the pauper, of a hiring for a year, or of the term for which he was to serve; but the pauper apprehended that his master might have parted with him at any time, on giving reasonable notice. No evidence was given of the time for which any such man or men as above referred to had been at any time hired by Ponsford. The sessions thought no settlement was gained. Willes, J. "The first agreement was general, but the pauper was to receive wages like a former servant. I think the conversation at the end of the year was an agreement to serve another year, which makes it even stronger than the case of a general hiring. *Rex v. Stockbridge (supra),* is decisive of the present question." Ashhurst, J. "I am not for narrowing the determinations in favour of settlements; and this does not go so far as some other cases. The general rule is, that an indefinite hiring, without any circumstances to show that a less time was meant, shall be considered as a hiring for a year. In this case, the first conversation would amount to an indefinite hiring; the second seems to show that it was in the mind of both that it should be a hiring for a year. There are cases where it has been so held against the apprehension of both." Buller, J. "It is settled in a variety of cases, that the apprehension of the pauper makes no difference. The first agreement would be sufficient; but on the second there can be no doubt."

Rex v. Bath Easton, Burr. S. C. 823; 2 Bott, 296. The pauper was hired to John Giles, in Devizes, to serve him as a journeyman barber, who was to give him meat, drink, and lodging. In lieu of wages he was to have the Christmas boxes. No time was mentioned. Upon these terms the pauper lived with Giles four years, but thought himself at liberty to leave his master when he thought proper. Afterwards, he was hired to J. Bedford, an innkeeper at Mangotsfield, "to serve him in his stable," who was to find him meat, drink, washing, and lodging, but no wages, other than what he

A hiring, without any stipulation as to time, but only as to meat, &c. and service for three years, a hiring for a year will be implied.

should receive as perquisites of the stable; no time was mentioned, and he apprehended that his master might have turned him off, or he might have gone away from him, at their pleasure. (a) From the time that the pauper began to serve Bedford, to the time at which he left him, was sixteen years. During which time he left Bedford several times at his pleasure, but from the time of his first going into the service, he was with Bedford two years and upwards without leaving him at all; and at the end of the sixteen years, he was with him for three years together without interruption. And this was admitted without argument to be a settlement at Mangotsfield.

Rex v. Worfield, 5 T. R. 506. The pauper went to live with A. Smith, in Bridgenorth, and served him near a year, but was not hired to him as she knows of. While she lived with Smith, J. Jones met her, and taking her to his house, asked her if she were hired again to Smith? She answered, that she was not. Jones then asked her, "if she would come and live with him and take care of his child?" to which she consented, and soon after she went to him. A few days after she had been with Jones, he told her he would find her meat drink, and clothes, and asked if she would be satisfied with that? she told him she should. He said he would have given her money, but that it was better for her to have clothes, as she was connected with bad friends, who would take her money. She went to Jones at Christmas, and lived with him about two years and a half, leaving him in May, when her mistress told her that her child was then old enough not to require any further attendance, and dismissed her. She said in her own opinion she was at liberty to have left Jones at any time. Lord *Kenyon*, C. J. "It has been so long settled that a general hiring is a hiring for a year, that it ought not now to be controverted. In my opinion the hiring in this case was a hiring for a year; the circumstance of the pauper's going away (b) in the middle of a year, does not show that this hiring was not of such a description; for it was competent to both parties to put an end to the contract whenever they pleased, and here they did dissolve it in the middle of the year. It is much to be wished that in cases of this kind the justices at the sessions would draw the conclusion, and state it as a fact whether or not there was a hiring for a year." *Ashhurst*, J. "The pauper was to be provided with clothes in lieu of wages; if the master had clothed her the day after she entered the service, could it have been the intention of the parties that she might have left the service immediately if not the next day? what other line can be drawn? This shows that both parties meant that the service should be permanent, and that the pauper could not leave the service when she pleased." The other judges concurred.

Rex v. Macclesfield, 3 T. R. 76. The pauper was hired by F. Berwick, of Macclesfield, button-maker, for eleven months, at ten guineas wages; at the end thereof, he and his master settled his wages for eleven months, and his master gave him a half-guinea over, saying, that he had been a good servant, and added, "You may as well stay on an end in your place; the place suits you, and you suit the place." The pauper's answer was, "Very well, sir, I have no objection." And he continued to follow his master's business near three years. The pauper being at Birmingham with his master's cart was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service, but the pauper kept no account himself. A few days after his return from Birmingham his master settled with him; he did not know in what manner, but supposed the money was right, and thought his wages would come to about four shillings a-week. *Rex v. Clare* (post, 368), where the pauper was originally hired for a month, and continued in the same service five years, and yet gained no settlement by it, was cited against this order. By Lord *Kenyon*, C. J. "It is clear that there must be either an express or an

1. Of the Contract of Hiring.

Where the pauper agreed to live with one as nurse, and was to receive clothes, &c. but no time was mentioned, and she remained two years and a half, going away in the middle of a year, a yearly hiring was presumed.

Hiring for eleven months, and then on an end, gives a settlement, as the latter is an indefinite hiring.

(a) In many of the early cases the apprehension of the master and servant as to the legal effect of the contract, is stated; but it is now settled that can make no difference. See *Rex v. Seaton*, ante, 354.
(b) *Rex v. Newton Toney*, post, 364.

1. *Of the Contract of Hiring.*

implied contract for a year, in order to give the servant a settlement. An hiring for eleven months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though eleven months only were expressed, as in *Rex v. Milwich*, where there was a hiring for eleven months, with an agreement to give in another month's service. Now in this case the first hiring for eleven months was not sufficient to confer a settlement; but when that time was elapsed, the master told the pauper that he might *as well stay on an end*; which in that part of the country means an indefinite time. The second hiring therefore must be considered as a general hiring, which the law construes to be a hiring for a year. As to this expression referring to the time for which the pauper was originally hired, it is too refined; it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second agreement, it negatives the idea that the parties contracted for another eleven months for the same definite sum which the pauper received under the first agreement; for it is stated that he received about four shillings a-week, which does not amount to the same apportionment of wages." *Ashhurst and Grose, Js. concurred.*

Where there were three successive hirings from a few days after Old Michaelmas to the following Old Michaelmas: Held, that there was not such a general hiring as conferred a settlement.

Rex v. Ardington, 3 Nev. & M. 304; 1 Ad. & El. 260. An order for removing George Barrett and family from Ardington to Albourne, Wilts, was quashed. Case:—Three or four days after Old Michaelmas day, 1823, the pauper being then about sixteen years old, and settled in Aldbourne, was hired by his father to Mr. William Brown, a farmer, in the parish of Little Hinton, Wilts, (the father being in Brown's service also), to serve as shepherd for his board and lodging in the house of Brown at Little Hinton, until the following Old Michaelmas, at 5*l.* and 6*s.* a week wages for the father. The pauper served accordingly as shepherd under that hiring, boarding and sleeping in Brown's house till Old Michaelmas day, 1824, on which day he, by his father's leave, went to Highworth fair for pleasure, and returned in the evening to his master's house. Mr. Brown settled with the pauper's father for the wages due to himself and his son up to Old Michaelmas, four or five days after Old Michaelmas, the father receiving the wages for his son. On the day the wages were paid, the master hired the pauper's father, the pauper, and his brother to serve him until the Old Michaelmas following, at 6*s.* a week for the father, and 5*l.* 10*s.* for each of the sons at Michaelmas. The pauper and his brother continued with their father to board and lodge at Little Hinton, the pauper being employed as before till Old Michaelmas day, 1825, when the pauper drove his master's sheep to Highworth fair, and returned in the evening to Little Hinton. A few day's after Old Michaelmas, 1825, the master again settled with the pauper's father for the wages agreed upon for himself and his sons at the previous hiring, and asked the father "if he and his sons chose to go on with him?" to which the father said "yes." The wages were to be the same. The pauper remained at his master's house, boarding, and lodging, and working on the farm as usual till about the 10th March, 1826, when he was sent by his master with sheep to a farm he was about to occupy at Lockhinge, in Berkshire. He remained there, receiving 5*s.* a week board wages, till Lady-day, 1826, when he returned to Brown at Little Hinton, and continued there as before till the beginning of April, when Brown quitted Little Hinton, having paid the pauper's wages, due to him at Lady-day, 1826, to his father, without deducting any thing on account of the pauper's absence at Lockhinge. The pauper then entered the service of the incoming tenant. The pauper boarded and lodged at Brown's house and was employed on his farm as shepherd continually from three or four days after Old Michaelmas, 1823, to a few days after Lady-day, 1826. No other person was ever hired or employed by Brown in place of the pauper during that time. The father received the pauper's wages from Brown, without accounting to the pauper, but found him in clothes and pocket money during his service. The pauper might have left his master's service at Old Michaelmas, 1824. He did not know what wages he was to receive. On these facts the sessions held that a yearly hiring of the pauper by Brown, in Little Hinton, must be implied, and they quashed the order of removal. The case now coming on

for argument the court asked the counsel who supported the order of sessions, what ground there was for implying a yearly hiring? *Per Curiam. Patten-son, J.* "It would be difficult to say how the master in this case could have done better than he has to avoid a yearly hiring, and that seems to have been the intention of the parties. The words used by the master clearly do not import an indefinite hiring." Order of sessions quashed.

Rex. v. South Newton, 10 Bar. & Cres. 838. An order for removing Thomas Brown, wife, and children from Woodford to South Newton, was confirmed. Case:—The pauper in 1823, while single, was hired as shepherd by the tenantry farmers of the manor of Lower Woodford, for eleven months, at 14s. per week, and was to have a piece of land, called the Shepherd's Croft, which was to make up money as good as 16s. a week, to keep certain sheep belonging to them, called the tenantry flock. Payment of his monied wages was made quarterly by the tenantry farmers. The pauper, after serving eleven months, was hired again for one month. Before the end of the month the pauper was hired "to go on again upon the same terms." He served a year under this last hiring, and slept the last forty nights at South Newton, the appellant parish, having married in the course of that year. The tenantry farmers above-mentioned are leaseholders and copyholders of the manor of Lower Woodford. *Bayley, J.* "I am of opinion that the pauper was settled in South Newton by virtue of the hiring and service for a year. It appears that he was hired for eleven months, and afterwards for a month, and then he was hired to go on again on the same terms; that was an indefinite hiring and therefore a hiring for a year, and as he resided in South Newton the last forty days he was settled in that parish."

1. Of the Contract of Hiring.

In an award for the division of common field lands, an allotment was made for the shepherd of the common sheep flock: Held, that he being hired by the year had not such interest in the land as to give him a settlement.

5. What is a Hiring for a Year. (a)

Whether there has been a hiring for a year or not is, upon most occasions, a question of *fact*, which the sessions are to determine; and the court of King's Bench will not interfere with their conclusion upon the subject, unless it is founded upon some mistake of the rules of evidence, or of the law applicable to the circumstances of the case. Sometimes the sessions content themselves with stating the evidence in a special case, without any express finding as to whether there was in *fact* a hiring for a year or not, a practice of which the court has repeatedly complained, and with reference to which the judges have frequently expressed a wish *that the justices at sessions would understand that it is their duty to determine questions of fact, and not to send them to the Court of King's Bench for decision.* (*Rex v. Bottesford, 4 B. & C. 84; 6 D. & R. 99; post.*)

Rex v. Tyrley, 4 B. & Ald. 624. Removal from Audlem to Tyrley. Order confirmed. Case:—Edward Peake, the pauper, hired himself generally at 8l. and his washing, without any time being specified; but which the sessions found to be a general hiring for a year. He entered into his service the day before New Year's Day, and quitted with the consent of his master two days after Christmas Day, the usual day that servants in that part of the country go into and leave their places. The pauper received the whole of his wages at the time of his quitting, and stated that when he left, he considered himself no longer under the control of his master. The sessions found this to be a hiring and a service for a year. *Abbott, C. J.* "As the sessions have expressly found the fact of a hiring and service for a year, I think we are bound by it. I cannot say that no reasonable person could come to such a conclusion upon the facts stated, although I certainly should not have come to it myself. I should have thought that in this case there was neither a dispensation with the service, nor a dissolution of the contract; but that the contract had arrived at its termination, and that before a year had expired. But still as the question was properly for the determination of the sessions, who have expressly found the fact otherwise, I think their order must be confirmed."

5. What is a Hiring for a Year.

A pauper hired himself, without specifying any time, and entered into the service the day before New Year's Day, and quitted two days after Christmas, receiving his full wages: that being the usual time that servants go into and leave their places. The sessions having expressly found this to be a hiring and service for a year, the court considered themselves bound by that finding.

(a) See division of the subject, *ante*, 331.

1. *Of the Contract of Hiring.*

Hiring from Whitsuntide to Whitsuntide gains a settlement, though there be less than 365 days in that period.

So although the service be ended before the following Whitsunday, if it has continued more than 365 days.

Hiring two days after Michaelmas till the following Michaelmas gains no settlement.

Hiring the day after Michaelmas day till the Michaelmas day following gains a settlement.

Rex v. Newstead, Burr. S. C. 669; 2 Bott, 343, vol. iii. F. Downey was hired to serve T. Hill for a year, from Whitsuntide to Whitsuntide, at certain wages. She entered upon the service at Whitsuntide, 1767, and continued till Whitsuntide, 1768, when she received a year's wages. It had been usual in the country to hire servants from Whitsuntide to Whitsuntide, and that a hiring and service from Whitsuntide to Whitsuntide had always by the contracting parties been deemed a year's service; and agreeably thereto the master had always paid a full year's wages for such service, without diminution or addition, and without making any distinction or difference, whether the space of time between the one Whitsuntide and the other consisted of more or less than 365 days. The space of time between Whitsuntide, 1767, and Whitsuntide, 1768, was less than a year by sixteen days. The court however said: "There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way (a) of hiring servants in that country, and such service is always deemed to be a year's service. Parish officers are to be appointed in Easter week, or within one month after Easter, (which is a moveable feast), yet they are considered as executing the office a whole year, though it may fall short of 365 days. The court were unanimous that this hiring and service were sufficient to gain a settlement."

Rex v. Ulverstone, 7 T. R. 564; 2 Bott, 243; 1 Nol. P. L. 359, 385. The pauper was hired by M. Hodgson, of Hawkshead, to serve him from Whitsuntide, 1796, to Whitsuntide, 1797. She entered into his service on Saturday, May 21, 1796, and continued to serve him in Hawkshead till the Thursday before the following Whitsunday, being June 1, 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on July 1 following. It was contended that, as in the above case of *Rex v. Newstead*, a hiring from Whitsuntide to Whitsuntide, although less than 365 days, was holden a sufficient hiring for a year; so that where it appears to have been the intent of the parties that the hiring should be according to such ecclesiastical division of the year, the parties ought to be holden to the same term of service in order to gain a settlement, although it happened in this case to be more than 365 days; but as the pauper was discharged for a legal cause before Whitsuntide happened again, she could not gain a settlement. Lord Kenyon, C. J. "The case is too plain for argument. The only question is, whether a service for more than 365 days is not a service for a year? The term ecclesiastical year is altogether new, and was never before applied to this subject." And it was held that a settlement was gained.

Coombe v. Westwoodhay, 1 Str. 147; 2 Bott, 243; 1 Nol. P. L. 357. Michaelmas day was on Thursday, and a person was hired upon the Saturday following, to serve from the said Thursday till Michaelmas: and it was held to be insufficient to gain a settlement, being not a hiring for a year. It was further observed that there must first be a hiring and then a service; and not *vice versa*, a service and then a hiring. (But service before may connect with service after hiring.)

Rex v. Navestock, Burr. S. C. 719; 2 Bott, 345; 13 Geo. III. The pauper, at the statute fair at Ongar, on the day next after Old Michaelmas day, the 11th of October, 1733, hired himself to S. Pasford, of Navestock, to serve till the Old Michaelmas day following. He entered upon the service, and continued in it till the Old Michaelmas day following; on which

(a) But the custom of the country cannot aid an imperfect contract. See *Rex v. Lowther* (post, 361), and *Rex v. Hanwood* (post, 362). The authority of the above case has in one instance been sustained, on the principle, that as the hiring was from one moveable feast to another moveable feast, its duration was uncertain (*Rex v. Stanton Massey*, post,

362; *Rex v. Navestock*, supra); but in the case of *Rex v. Massey* (post, 362), Lord Ellenborough, C. J. said, that "a hiring by a schoolmaster from one Christmas breaking-up to another Christmas breaking-up, is not a hiring for a year, if less than a year is comprised in the period."

day he received his wages, and quitted the service. This hiring was according to the custom of the country. *Mansfield, C. J.* "There must be a hiring for a year. If the hiring be for less than a year it will not do, be the deficiency ever so little. Two days or one day short of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feast to a moveable feast, according to the custom of the country, has been determined to be a hiring for a year; being according to the custom of the country, although there should not be 365 days. And here they have stated the custom and usage of the country to hire servants in the manner this pauper was hired, and the custom is very material to explain it. If this should be taken not to be a hiring for a year, there has been no settlement gained in this country by a servant; for all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from Michaelmas to Michaelmas." *Aston, J.* "It appears that the pauper entered on the day after Michaelmas day; 'till' is the word relied on, to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the Michaelmas day, and took his wages; the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it." *Willes, J.* "The custom of the country in such a doubtful case as this must be called in aid."

Rex v. Syderstone cum Bermer, Cald. 19; 2 Bott, 346. The pauper applied on Old Michaelmas day to J. E., of Milham, to be hired by him, but they could not then agree about wages; the pauper asking eight guineas a year, and the other offering only six pounds. The next day, viz., October 11th, between two and three o'clock in the afternoon, they were together at a public house at Milham, when J. E. asked the pauper if he would take the wages offered him the day before, which he refused; but after some conversation the pauper hired himself to J. E., as a servant in husbandry, until Michaelmas following, at seven pounds wages; and entered his service on the evening of that same day, and staid till 10th October following, being Michaelmas day, 1772. On that day his master, not having finished his harvest, asked the pauper to stay and help him with his harvest; and though the pauper thought himself at liberty to go away, yet he staid with his master until the 11th October at noon, when after dinner he asked his master for his wages, who paid him seven pounds; and the pauper quitted his service, but did not ask or receive any recompence for his additional service. The court were clearly of opinion that this gained a settlement. *Lord Mansfield, C. J.* "To be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the 11th, yet we shall say that he was hired at twelve o'clock at night on the 10th; for it is settled that the law will not allow the fraction of a day. He served till the 10th; that is a year. If a man be born on the 10th, he is of age on the 9th." *Aston and Willes, Js.* concurred.

Rex v. Skiplam, 1 T. R. 490. The husband of the pauper, at Old Martinmas day, 1777, hired himself for a year, and served that year in Skiplam: on the next day after Old Martinmas day (viz., on the 23rd of November, 1778), he hired himself to one Barker, of Nawton, to serve him from thenceforth until Old Martinmas day following. He entered into the service of Barker a few days after such hiring, and continued to serve him until the Old Martinmas day following, on which day, about twelve o'clock at noon, he received his full wages, and left his master's house in the evening. *Ashhurst, J.* "It is much to be lamented that there is such confusion in settlement cases; therefore whatever the late determinations may be, they ought to be adhered to; now the last case (*Rex v. Syderstone, supra*) seems to correspond with this in every point: before that a distinction had been made, as where the hiring and service had been expressly found to be for a year, according to the custom of the country; but in the last case no such distinction was taken; so here there is no custom stated; and 'until' must be taken to be inclusive. Therefore there was a hiring and service for a year, for he entered into the service the first day of one year, and served till the

1. Of the Contract of Hiring.

"Till" is inclusive, see *Rex v. Skiplam, infra*.

A hiring on October 11th till Michaelmas following, being October 10th, is a hiring for a year.

A hiring from Martinmas day till the Martinmas day following, is a hiring for a year, till, being for this purpose inclusive.

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first instant of the next." *Buller, J.* "The only question is, whether Martinmas day is to be taken *inclusive* or *exclusive*. The pauper's husband was hired the day after Martinmas day to serve *till the Martinmas day following*. From the moment of the hiring he became the servant of the master, and continued in the service *till* Martinmas day: then does the word '*till*' include the day? The former cases have decided that it does; and if it only included a *part* of the day, as there is no fraction of a day, the service would be complete." Both orders quashed.

What is not a Hiring for a Year.

A pauper had been hired for three years at 20*l.* per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired, his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master, other than that belonging to the office of looker, without extra wages. No hiring for a year.

What is not a Hiring for a Year.

Rex v. Lydd, 4 D. & R. 295; 2 D. & R. Mag. Ca. 20; 2 B. & C. 754. Removal of G. Goldsmith, &c., from Lydd to Thurnham, quashed. Case:—In August, 1819, the pauper was hired to Mr. Fisher, in Midley, for three years, at 20*l.* per annum, as looker and to spud thistles. (The duty of a looker is to superintend the flocks and fences upon the lands of his employer, and he frequently has several masters, and works for any persons who may employ him, according as his time allows). The pauper went into the service of Fisher on the 26th of October, and was married on that day. He served Fisher for three years. He worked for no other person but Fisher for the first year and three quarters, but at the end of that time he hired himself as looker to a Mr. Russell. During his service with Fisher he did other work for him not belonging to his duty as looker, such as turning mould, lambing and shearing, for which he was always paid upon new and separate bargains on each occasion; and upon other occasions he did day work as a labourer for Fisher, for which he was also paid by the day. At the time of the pauper's contract with Fisher, nothing was said about his being at liberty to hire himself to or work for other masters during the three years, but Fisher said he did not think he should have full employment for the pauper; he would employ him as far as he could. Whilst he was working for other people, his wife hoisted a signal by putting a flag out of the window, upon which he considered himself bound to quit his work and attend to his duty as looker to Fisher, for which he was originally hired; and he invariably returned to Fisher when so summoned, and never worked on any lands from whence the flag could not be seen during the whole of the three years. He was not, however, to do any work for Fisher other than that for which he was originally hired as a looker, without receiving extra wages. His agreement with Russell was by the acre, and he bargained with him for a year at 14*l.* During the whole of the three years he lived on Fisher's land at Midley. *Abbott, C. J.* "I am of opinion that there was not in this case any contract of hiring and service for one whole year. Here the master had not the control over the servant for the entire year, but only for so much of the year as the duties of looker required his attention. At other times he was at liberty to employ himself in any manner he pleased, either in working for other persons or for his master, and when he worked for the latter he always received extra pay." *Bayley, J.* "In order to gain a settlement by hiring and service, there must be a contract for one whole year, and a service for the whole year. This is distinguishable from the cases cited, because here, from the very nature of the employment, it was not likely to fill up the whole time of the pauper. Scarcely ever more than a few hours each day would be required. This is very like the case of a person employed as an occasional servant for the purpose of brushing clothes. The master has no control over the servant as soon as he has performed the required service, and that takes up but a small portion of his time." *Littledale, J.* "*Rex v. Horwick* is the only case cited which bears any resemblance to or forms any authority for the present; and even that is distinguishable from it in one important particular; for there the pauper was provided with full and fair employment by one and the same master; whereas here, the work done cannot possibly be rated as the entire service of any husbandman, and the pauper actually resorts to other employers to fill up the measure of his labour, and to augment

the sum of his wages. Upon the grounds already detailed by the court, I am also of opinion that the order of sessions must be quashed." Rule absolute for quashing the order of sessions.

Rex v. South Killingholme, 10 B. & C. 802. An order for removing R. Robinson and family from South Killingholme to Elsham was quashed. Case:—The pauper being unmarried and without child, in 1823 hired himself for a year for 5*l.* wages and 5*s.* earnest, to his aunt, who resided in North Killingholme and occupied six acres of land and kept two cows there; when his aunt had no work for him he was to work for any body else for his own benefit. The pauper entered the service, resided, and worked with his aunt during the whole year, except that in harvest time he worked for a fortnight with another person at 2*s.* per day, which he received for his own benefit, sleeping every night at his aunt's, and doing all the work she had for him to do every morning before he went to work, and generally in the evening when he returned, unless it was too late. He received his wages at the expiration of the year. The next year he was hired to another master at 9*l.* wages. Lord Tenterden, C. J. "The decisions certainly are not very distinguishable from each other, but I think this case comes nearer to *Rex v. Edgmond*, (a) *Rex v. Polesworth*, (b) and *Rex v. Lydd* (ante, 360) (c), than to the more early ones. The parties to the contract must have contemplated some portion of the year when the aunt would not have employment for the pauper; if that be so, the contract did not include the whole year, but only such part of the year as she would have work for the pauper." Bayley, J. "The fair meaning of the contract was to limit the service of the party hired to that portion of the year during which the aunt might have occasion for it." Littledale, J. concurred. Parke, J. "If the meaning of the words be taken to be that the aunt, when she did not choose to employ the pauper the whole year, might decline doing so, the contract of hiring was not for a year. And construing the words of it according to their natural import, I think that was the fair meaning, and that this was an exceptive hiring. In *Rex v. Chertsey* (d) the pauper was hired for a year, and was 'to have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour.' The latter words were considered by Ashhurst and Grose, Js. to give her liberty to do such work as she could consistently with the service which she was in the first instance bound to perform for her master." Order of sessions quashed.

Dunsford v. Ridgwick, 2 Salk. 535; 2 Bott, 250. A person was hired for half a year, and after that was hired again for another half year with the same master, and served a year in one continued and entire service, but by several hirings. By the court: "It ought to be one entire contract and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, if he continue a year, shall gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable."

So *Horsham v. Shipley*, Fol. 134; 2 Bott, 340. A person was hired from May-day to Lady-day, then from Lady-day to May-day: and the court were of opinion it did not gain a settlement, for they said the hiring must be for a year.

Rex v. Lowther, Burr. S. C. 674; 2 Bott, 238. Case:—The pauper was hired to W. Thompson from Whitsuntide to Martinmas; and again was hired to him for the succeeding half year, from Martinmas to Whitsuntide; and in pursuance of those hirings she served for the complete year without leaving her service, and received two half years' wages. The usual custom of hiring servants in Cumberland is from half year to half year. And it was agreed,

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Hiring.

A hiring for two half years in succession, will not make a yearly hiring,

though such hirings be according to local custom.

(a) 3 B. & A. 107.
(c) 2 B. & C. 754.

(b) 2 B. & C. 715.
(d) 2 T. R. 37.

1. *Of the Contract of Hiring.*

Hiring at a statute fair, if for less than a year, gains no settlement, though such a hiring be customary.

without argument, that no settlement could be gained under such a hiring and service.

Rex v. Hanwood, Dougl. 439; Cald. 100. At Otley there is a custom for servants to hire by the year at two different statute days, one on the Friday before Old Martinmas, and the other on the Friday next after Old Martinmas, at which latter statute day they always hire till old Martinmas-day following, which by the custom is considered as hiring for a year. Old Martinmas-day in 1775 was on a Tuesday. On the Friday following, being the second statute day, the pauper hired till Old Martinmas day following, and served that time. Willes, J. "In *Rex v. Newstead* the duration was uncertain, and the hiring was supported by the custom of the country: the custom here (if it could be of any weight to control the statute) is stated to be the custom of Otley, and the contract was performed in another place." Mr. Justice Buller said "There is no case where a hiring upon the face of it appears to be for less than a year, in which the court has held that a settlement was gained; and it would be dangerous to make a new precedent of that sort."

Rex v. Standon Massey, 10 East, 576. Ongar statute fair is held on the day after Old Michaelmas, except when Old Michaelmas day falls upon a Saturday, and then on the following Monday. At Ongar fair, 1806, held on a Monday, which was two days after Old Michaelmas in that year, the pauper was hired to serve W. C. from the fair-day till the Old Michaelmas-day following, at yearly wages. Lord Ellenborough said "No settlement could be gained under such a hiring, and that it was in no manner similar to a hiring from a moveable feast in one year to the same moveable feast in another." He added, "If we allow these constructive hirings to go on, it will soon be contended that a servant acquires a settlement who is hired by a schoolmaster from the breaking up at Christmas to the breaking up at Christmas, though less than a year should in fact be comprised in the period." And he added, that "The cases had gone far enough upon this subject."

Rex v. Little Coggeshall, 6 M. & Sel. 264. The pauper at Michaelmas, 1806, went as a servant in husbandry for a month, upon liking, and if he suited his place he was to continue during the year, and have three guineas wages. When he had served the month, his master said that he suited him, and if he liked he might continue with him; but added, that he must leave his place a fortnight before the end of the year, in order that he might not be an incumbrance to the parish. The pauper made no answer. Fourteen days before the end of the year his master told him that his time was up, and as he had behaved himself well he would pay him all his wages, which he did, and then desired him to go to his father, where he might hear of another place. The pauper made no objection; took his wages, went away, and never returned. The sessions thought it a dispensation from service for the fourteen days. Lord Ellenborough. "The point on which the settlement fails is, that there was not any hiring for a year. I should be glad to know if the master could have maintained any action against the servant for not serving him the year. At the end of the month of probation, the master said he would continue him, but he must go away a fortnight before the end of the year, that he might not be an incumbrance to the parish. This therefore was a stipulation by way of condition that they should part within the year." Bayley, J. "With respect to what has been said of the original contract, I would ask whether at the end of the month the pauper had a right to insist upon his master's continuing him the year." Order quashed.

Rex v. Astley, M. 1815, 4 Burn. 279, 23d edit. Removal from Corley to Astley. Order confirmed. Case:—At Michaelmas, 1812, the pauper was hired by Mr. Lillyman, of Astley, for fifty-one weeks, at two guineas and a half wages, and went into his service and lived with him accordingly. About a fortnight before the expiration of the fifty-one weeks, the pauper was hired again by Mrs. L. for fifty-one weeks, to commence from the Michaelmas following; and on the day on which the first fifty-one weeks expired, and before the expiration of the first fifty-one weeks, she agreed with her master to serve him for the ensuing week ending at Michaelmas, for which a few

Hiring for less than a year, to avoid a settlement, although a year's wages be paid, is not a yearly hiring.

Hiring for fifty-two weeks, is not a hiring for a year.

day after Michaelmas she received 1s. wages. Three weeks before the end of the first fifty-one weeks it had been proposed by the mistress to the girl and her mother that the girl should stay in her service the odd week, after the end of the first fifty-one weeks, and before the commencement of the second fifty-one weeks. The girl was unwilling, and would not say whether she would or not, but the mother was willing she should stop; but a full agreement for the week was not made until it was made by the husband *on the day on which the first fifty-one weeks expired*. At the time the pauper agreed with her master to stay the odd week, the other servant was gone, and her mistress was ill and near her confinement. The pauper stayed in the service the odd week, and the second fifty-one weeks. It was contended that the continuance of the pauper a week in the service after the expiration of the fifty-one weeks, completed her year's service, and she thereby gained a settlement. Lord *Ellenborough*, C. J. "The question is not whether one week and fifty-one weeks make a year, but whether fifty-two weeks make a year. Fifty-two weeks do not make a year, and consequently such a service does not give a settlement." Bayley, J. "There are but 364 days in fifty-two weeks, and 365 days, 6 hours, and 49 minutes in a year. Unless therefore the whole of the latter time is included in the contract, no settlement can be obtained." Lord *Ellenborough*, C. J. "The question is purely arithmetical, and the sessions at Warwick will in future know the difference between a contract for fifty-two weeks, and a contract for a year." Order of sessions quashed.

1. *Of the Contract of Hiring.*

Rex v. Ackley, 3 T. R. 250. On Saturday, 13th October, 1787, being three days after Old Michaelmas day, which was on a Wednesday, the pauper hired himself to J. Clarke, to serve him until the next Michaelmas. He accordingly went into such service, and continued therein till Saturday the 11th October, 1788, being the day after Old Michaelmas day, which was on a Friday (it being leap-year), and was paid his wages and went away. As this was a service for 365 days, the sessions thought it gained a settlement in Ackley, and confirmed the order, by which he and his wife were removed from Bicester Market End to Ackley. But the court were clearly of opinion that here was no hiring for a year; this was a hiring for two days short of a year; and though the court has been extremely indulgent with respect to services, they have been always strict with regard to hirings. Order of sessions reversed.

Hiring three days after Michaelmas till the Michaelmas following, will not gain a settlement, although there be a service for 365 days (being leap-year.)

Rex v. Worminghall, 6 M. & Sel. 350. Case:—The pauper was hired in 1807 at Thame fair, held on the Tuesday next after Old Michaelmas day, which in this year happened on the 13th October, for eight guineas, five shillings, and three pence. He served till the 11th October, 1808, on which day he received his full wages, and quitted the service. 1808 was a leap-year. Lord *Ellenborough*, "In those years which consist of 366 days, a hiring and service for a year must be for that same number of days." Bayley, J. "One day was wanting to complete the year: for in leap-year the statute (24 Geo. II. c. 23) enacts that the year shall consist of 366 days." Holroyd, J. "The statute (21 Hen. III.) for regulating the bissextile year, ordains that in leap-year the intercalary day with the day preceding it shall be accounted as one day."

In leap-year the hiring must be for three hundred and sixty-six days.

Rex v. Rorby. (See case, *post*.) The pauper served only 365 days in leap-year; and the court said he had contracted to serve a year of 366 days (it being leap-year), which he has not done.

6. *Weekly or Monthly Wages and Notice.*

Where the duration of the hiring is not expressed in the contract, the question whether it is a yearly hiring or not, will frequently be determined by the stipulation as to wages. Thus where the parties agree for *yearly* wages, the presumption of a *yearly* hiring arises. "If the payment of weekly wages be the only circumstances from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring; but if there be any thing to show that the hiring was intended for a year, the reservation of

6. *Weekly or Monthly Wages and Notice.*

1. *Of the Contract of Hiring.*

A contract for wages at six shillings a week, summer and winter, is a *weekly* and not a yearly hiring.

weekly wages will not control that hiring." *Per Buller, J. Rex v. Newton Toney*, 3 T. R. 453, *infra*.

Rex v. Dedham, Burr. S. C. 653; 2 Bott, 292. The pauper was hired in April, 1767, to J. Mason, to serve him in the business of a glazier, at the wages of 6s. a week, board, lodging, and washing, summer and winter. He served for eleven months, when his master, having taken an apprentice, informed him that he must lodge out of his house; upon which the pauper demanded 6d. a week more, alleging that he would otherwise quit the service, on account of his master's having withdrawn from the original agreement. He received the additional 6d. a week till the September following, and the pauper apprehended he was bound to stay with his master a year. The sessions thought a settlement was gained. Lord Mansfield, C.J. "All the cases require a hiring for a year, and there must be a *reciprocal obligation on both parties*. I see nothing here to make it a hiring for a year. It was a hiring at so much per week: when the master could not lodge the servant any longer, they came to a new agreement for an additional 6d. a week. The servant alleged that he would quit the service unless the master would comply with his demand. And to prevent his doing so, the master complied, and paid him 6d. a week more." Yates, J. "There must be a hiring for a year, either in law or *express words*. These words do *not* express it. The demand made by the servant destroys the presumption, so that neither of them seems at that time to have thought the contract originally made between them was binding for a year." Aston, J. "Though a general hiring is a hiring for a year, yet there must be an obligation upon the servant for a year. But nothing here infers such an obligation. 'Six shillings a week summer and winter' only imports that the wages should continue always the same, and not be varied according to the seasons. The master's complying with the demand, shows how the contract was understood by them both."

A hiring at so much a week is not a general hiring.

Rex v. Newton Toney, 2 T. R. 453. W. Slater removed from Harbridge to Newton Toney. Case:—Slater went to one Postans, a publican, at Newton Toney, who had before employed him three times to go into Shropshire with some hounds, and on his return from his last journey he agreed to live with Postans as ostler at 4s. 6d. per week, and continued with him as ostler for one year and a half. On demanding his wages, Postans alleged that as he had received vails, 4s. 6d. a week would be too much; whereupon he agreed to accept after the rate of 10l. a year, in lieu of 4s. 6d. per week. He then left his service and lived elsewhere for five or six months, when he returned to Newton Toney, and agreed with Postans to serve him again as his ostler, as he had done before, at 4s. per week, which was about 10l. a year, and which he received when he asked for it. Under the latter agreement he lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time. Ashhurst, J. "The case of *Rex v. Dedham* (*supra*) is much stronger than this. It is impossible to distinguish the two cases upon principle; here the pauper 'hired himself as an ostler at 4s. 6d. per week,' but 'that cannot be considered as a general hiring;' and if either party had chosen to dissolve the contract before the end of the year, no action could have been maintained by the other." Buller, J. "This case is not so strong as *Rex v. Dedham*, for there the expression *summer and winter* showed that the party had it in contemplation to continue a year in the service. Here the hiring is merely at so much per week; now 'if there be any thing in the contract to show that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring,' and this hiring is of that kind." Grose, J. "It appears that the pauper actually left his service in the middle of the year, which satisfies me that it was not intended by the parties to be a hiring for a year." Order of sessions quashed.

Rex v. Odiham, 2 T. R. 622, was also a case of weekly wages, similar to the preceding, and was given up by the counsel as having been determined in the above case.

Rex v. Mitcham, 12 East, 351. Removal from Mitcham to Burghfield. Order quashed. Case:—J. Pendry was hired by Graves, the keeper of a toll-gate (a) in Egham, at 3s. a-week for as long time as his master and himself could agree, to assist in collecting the tolls: he served for more than a year, assisting Graves in collecting the tolls, and occasionally took care of a horse and some hounds. The hounds were kept in premises belonging to the toll-house, and Pendry during all that time resided in the toll-house. Graves did not hire him as he had before hired a brother of Pendry, with whom he expressly contracted as for a yearly servant. Graves paid Pendry as he wanted money pounds at a time. *Rex v. St. Ebbs*, Burr. S. C. 289, was quoted, and Lord Ellenborough said, "That was an indefinite hiring at so much a year, determinable at the end of the first quarter. This case is nothing more than a hiring at so much a-week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *Rex v. Newton Toney*; and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed, that is, from week to week.

It is not a general hiring when the master and servant may separate at pleasure.

Rex v. Christ's Parish, York, 3 B. & C. 459; 5 D. & R. 314; 2 D. & R. Mag. Ca. 442. The pauper, at ten years of age, went to F. P. for meat and clothes as long as he had a mind to stop. P. then lived at Craike, was a wood-carrier, and had two farms. The pauper was to do what he could, and what he was bid. He staid rather more than two years in P.'s service in Craike, and was supplied with meat and clothes. The pauper's father did not hire his son to P. and believed the bargain was only for meat and clothes. The sessions confirmed the order. Abbott, C. J. "It must be admitted that a general hiring is a hiring for a year, unless something appears to rebut that presumption. Here no such presumption can arise, because the pauper went 'for meat and clothes, as long as he had a mind to stop,' and consequently might have quitted the service any hour he chose; this completely negatives the idea of a hiring for a year." Bayley, J. "In *Rex v. Trowbridge*, which was decided in 1816, the court held that a hiring 'for as long time as the pauper pleased' was a hiring at will, and rebutted the presumption of a hiring for a year."

But the reservation of a power to dismiss without notice does not prevent the hiring from being general. *Rex v. Sandhurst*, 7 B. & C. 557; 1 Mun. & R. 95.

Rex v. Great Boden, 7 B. & C. 249; 1 M. & R. Mag. Ca. 42. The pauper, J. Harding, came to Mr. Hamshaw, an inn-keeper, residing in Great Bowden, and asked for a place. Hamshaw had no objection, and put him on as ostler, but said that he did not mean him to have a settlement, as the parish was very particular. No earnest or wages were given, but the pauper was to have what he got as ostler. He had his lodging and his board in his master's house. The pauper could have left at any time he pleased, or the master might have turned him away at any time. The pauper lived with Hamshaw as ostler, under the above terms, about a year and a half. Bayley, J. "I am of opinion that it was part of the contract between the parties in this case that each should be at liberty to terminate the connection whenever he thought proper. The sessions have stated that fact to us, and have stated it, in my opinion, not as a finding of their own merely, but as the law existing in the case, which could only arise out of the contract. I do not consider that under a general hiring the parties are at liberty to separate when they please; on the contrary, I think the one is bound to serve, and the other bound to employ, for a year; and that if that is not the understanding, the hiring is not general, but is a hiring for a less period than a year. A general hiring is, in contemplation of law, a hiring for a year; but this is not a general

1. Of the Contract of Hiring.

A hiring for so much a week, as long as the master and servant could agree, is only a weekly hiring, and gives no settlement.

Where a pauper, ten years old, went to service "for meat and clothes, as long as he had a mind to stop, to do what he could, and what he was bid," and he remained two years: Held, that this was not a yearly hiring, and that a settlement was not acquired by a service under it.

A hiring, which either master or servant may determine when he pleases, is not a general hiring for a year, and confers no settlement.

(a) Since the 3 Geo. IV. c. 126, under a keeper of a weighing machine, s. 51, and 4 Geo. IV. c. 95, s. 31, cannot create a settlement, ante, 330; hiring by a toll-gate keeper, or service and see Chitty's Col. Stat. vol. i. 492.

1. *Of the Contract of Hiring.*

A servant in husbandry, hired at the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings and sixpence per week, does not gain a settlement, that being only a weekly hiring.

hiring. This was a hiring 'for as long as the pauper pleased,' for the sessions inform us that it was part of the contract that the pauper might leave whenever he pleased, and that the master might discharge him whenever he pleased. That being the case, there was no hiring, either expressly or by implication, for a year, but there was a hiring for a less period than a year, and service under such a hiring confers no settlement. It seems to me, therefore, clearly, that the sessions have come to a wrong conclusion." *Holroyd and Littledale, Js.*, concurred. Order of sessions quashed.

Rex v. Dodderhill, 3 M. & Sel. 243. J. Hill, the pauper, hired himself as a servant in husbandry to Broad, who occupied a farm in St. Peter's, to serve him for the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings and sixpence per week, and then again to be reduced to four shillings. Nothing was said as to the time the pauper was to continue. He served Broad eighteen months in St. Peter's, residing there, and receiving the four shillings per week, except during the harvest month, when his wages were raised to ten shillings and sixpence, and afterwards were again reduced to four shillings. Lord *Ellenborough*, C. J. said, "I take the rule of law to be, that if no particular time is expressed for the continuance of the service, or is reasonably to be implied, a hiring for a year is to be intended. But it has also been laid down, that a reservation of weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances. Where there is a liberty to part at a month's notice, that imports that as there must be a month to determine the contract, the reservation of weekly wages is not to limit the duration of the contract, and therefore it becomes a hiring unlimited in duration, which the law terms a general hiring, or a hiring for a year. What is the case here? The hiring is at weekly wages, except in the harvest month, when the servant is to be paid according to a higher rate of weekly wages during that month; he is to be paid ten shillings and sixpence per week, the parties contemplating the possibility of the service continuing during the harvest month. If the exception had been 'for the harvest month,' instead of 'in the harvest month,' it might have afforded a more plausible argument that the contract was meant to endure at least for the period of a month; or if instead of ten shillings and sixpence a-week, it had been stipulated that the servant should receive two guineas for the month, that would have imported a consolidated month, (a) and might have repelled, on the same principle as the month's notice, the inference arising from the reservation of weekly wages; but that is not the language of this contract. All that is stated here is the payment of weekly wages, which, according to the cases, controls the duration of the contract." *Le Blanc, J.*, concurred. *Bayley, J.* "There is nothing in this case to show that the master bound himself to keep the man, or the man to serve the master for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week.

Weekly wages, and two guineas for the harvest.

Rex v. Lambeth, 4 M. & Sel. 315. The pauper's husband had been hired by one W. at eight shillings per week, and two guineas for the harvest, to do any thing the gardener should set him about; and under this hiring he served four years in Chadlesworth. The sessions thought he thereby gained a settlement in Chadlesworth, and now it was contended, in support of their order, that here was an agreement for a gross sum to be paid for the harvest, and not merely, as in *Rex v. Dodderhill*, for an increase in the weekly wages in the harvest month. And for the harvest, imports for a consolidated period, at least as long as a month, for which period these wages are reserved, which is inconsistent with the notion of a weekly hiring; and therefore this case falls within the principle of *Rex v. Hampreston*, 5 T. R. 205, post, 369. But per Lord *Ellenborough*, C. J. "It does not distinctly appear

(a) See, however, *Rex v. Lambeth*, 4 M. & Sel. 315, next case.

whether the two guineas were to be paid *de incremento*, or were to cover the whole harvest. All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest." Order of sessions quashed.

Rex v. Pucklechurch, 5 East, 382. The pauper hired himself for eight weeks, at 5s. per week. At Midsummer he agreed for 4s. a-week till Michaelmas: at Michaelmas he agreed to live with his master for board and lodging, and 2s. 6d. per week. No time was mentioned then. In the summer the pauper asked for more wages, and they were increased, and again reduced in winter. When the wages were increased nothing was said as to leaving the service, or dissolving the contract. The alterations of wages took place in the beginning of a week. He entered and left the service the same day of the week. He served in the whole five years and a quarter. There was no complete settlement of wages till they parted. Lord Ellenborough, C. J. "If nothing be said as to the term of the service, but that the servant shall have weekly pay, it must *prima facie* be understood that the parties intended a weekly hiring and service. But circumstances may show a different intent. Here, in the first instance, the hiring was for a specific term of eight weeks; the second hiring was also for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of *Dedham*, *Bradnich*, and *Newton Toney*, where a hiring at weekly wages has been holden to be a weekly hiring, and if it wanted any additional circumstance, the conduct of the parties themselves shows that they so considered it, for the servant left his master at the end of a week in the middle of the year. (a) If an indefinite hiring be stated on a record, and nothing shown to control it, it will be deemed a hiring for a year: but that is in the absence of any circumstance from whence a different interest is to be collected. Afterwards Lord Ellenborough said, "I hope it will be understood, that where nothing is said in the contract about time, but a reservation of weekly wages, it is only a weekly hiring." *Grose*, J. "It appears that the wages varied at the different seasons of the year: that cannot furnish the inference of an implied hiring for a year, for then the wages must have continued as they were first settled." *Le Blanc*, J. "There is another circumstance confirmatory of the construction that it is a hiring for a year, for the servant in the middle of the year required an advance of wages, to which the master acceded, a circumstance scarcely probable if they had contracted for a year."

Rex v. Warminster, 6 B. & C. 77; 9 D. & R. 70; 4 D. & R. M. C. 197. The pauper, being of age, was hired to Mr. Thring, a solicitor at Warminster, as gardener. At the time of the hiring, Mr. T. asked the pauper what he should give him a-week. The pauper asked 20l. a-year wages, which Mr. T. refused to give, but said he would give 6s. a-week for the winter, and 9s. a-week for the summer, which the pauper agreed to take. He was to be in Mr. T.'s house. Under this hiring the pauper served more than a year, living in the house. He and his master then came to a fresh agreement for weekly wages, without board; and about a week afterwards Mr. T., upon detecting some irregularities among his servants, discharged the pauper without notice. During the service under the first hiring, the pauper, on one occasion, gave his master a month's notice of his intention to quit; but the notice was not acted upon. The wages were accounted for weekly; but were paid occasionally, as they were wanted, and applied for by the pauper. *Rex v. Dedham*, *Rex v. Pucklechurch*, *Rex v. Dodderhill*, and *Rex v. Lambeth*, were cited. Abbott, C. J. "The cases referred to are all directly in point; but independently of any authorities, it is perfectly clear, from the facts of this case, that the master never intended to hire the pauper for a year. He first asks the pauper what he shall give him a-week—the pauper

1. Of the Contract of Hiring.

Where nothing said as to term of service, but that the servant shall have weekly pay, it is only a weekly hiring.

Where the servant asked yearly wages, and the master offered weekly wages, which were accepted, this was not a yearly hiring.

(a) In *Rex v. Road*, 1 B. & Ald. 362, it may fairly be inferred there was no yearly hiring. See *Rex v. Worfield*, ante, 355.

1. *Of the Contract of Hiring.*

A pauper agreed with an innkeeper to serve him as ostler, at two shillings a week in the summer, and one shilling and sixpence a week in the winter: Held, that this was a weekly hiring only.

asks 20*l.* a-year: the master refuses to give that, but offered a certain weekly sum, which the pauper accepted. That clearly negatives the supposition that a yearly hiring was intended."

Rex v. Rolvenden, 1 M. & R. 689. In June, 1820, the pauper agreed with W. Masters, an innkeeper, at Rolvenden, to serve him as an ostler. The pauper and his master bargained by the week, at 2*s.* per week in the summer, and 1*s.* 6*d.* per week in the winter. The pauper entered into the service in June. He received 2*s.* per week till the following Michaelmas: and from Michaelmas to Lady-day, 1821, 1*s.* 6*d.* per week; and from Lady-day to Michaelmas, 2*s.* per week. On the evening of the 23d of February, 1823, the pauper left his master's service, in consequence of a disagreement that took place between his master and him on the morning of that day. Bayley, J. "This case cannot be distinguished from *Rex v. Warminster* (*ante*, 367). The hiring here is for an indefinite period, at weekly wages, which is a weekly hiring. The mere arrangement that the wages shall be at one rate in the summer, and at another in the winter, does not show that the parties contemplated a service to endure through the summer and the winter, and, therefore, that they intended a hiring for a year; but shows only that they intended that if the servant, being hired at weekly wages, should remain till the summer, he should then have so much per week, and if he should remain till the winter, he should then have so much per week. The true meaning of such an arrangement is merely this: that the servant's wages, as a weekly servant, are to be regulated by the seasons. Looking at the terms of this contract altogether, they seem to me clearly to constitute only a weekly hiring, no service under which could confer a settlement." The other judges concurring, the order of sessions was quashed.

A hiring by the month, at a month's wages, or a month's warning, will not be a yearly hiring.

Rex v. Clare, Burr. S. C. 819; 2 *Bott*, 295. The pauper, a journeyman miller, at Michaelmas, 1768, let himself to E. S. by the month, at the wages of 8*s.* a-month, and was at liberty to depart at a month's wages, or a month's warning. At the time of hiring, it was agreed that if he continued in her service till harvest-time, he should be at liberty during the harvest month to let himself to any other person for the harvest month. He continued five years in the service of E. S., and during that time constantly let himself to some other person for the harvest, and received the common wages of 8*s.* from his mistress for the harvest month, and paid her one moiety of the wages earned at such harvest; but generally at the end of every month, and sometimes weekly, received his wages of 8*s.* a month, or in that proportion. He considered himself as a monthly servant, and at liberty to leave his mistress at the end of any month, on payment of a month's wages, or giving a month's warning. This point was given up by the counsel as indefensible: the hiring being only a hiring by the month.

A hiring to work at three shillings and sixpence per week, and condition for a week's notice, does not gain a settlement.

Rex v. Hanbury, 2 *East*, 423; 1 *Nol. P. L.* 332. The pauper agreed to work for one Saunders, as a blacksmith, at 3*s.* 6*d.* per week, with meat, drink, washing, and lodging at S.'s house: to part on a week's notice by either party. The pauper continued to serve for six years, without any alteration of terms, when S. died. The pauper received his wages every Saturday night or Sunday morning: went where he pleased on Sundays, as well as on other days; but was entitled to his board if he stayed at home. On other days, if he wanted a holiday, he asked for it and had it, his master deducting his wages. The sessions thought this a general hiring. It was argued that the mere continuance of the service for six years warranted the inference of a general hiring. Lord Ellenborough said, "Here the particular terms of the agreement are stated, and therefore we cannot presume that the pauper served under a different contract." His lordship added, "that this case was decided by those of *Dedham*, *Bradnich*, and *Newton Toney*. That in the first Lord Mansfield said, 'that all the cases required a hiring for a year, but that that was only at so much a week.' In the second he observed that the pauper was under no obligation to serve a year, and unless that be so, there can be no settlement gained; and that *Rex v. Hampreston* turned upon the circumstance of a month's notice to quit being required. But here the contract was determinable at a week's notice. Though the

sessions have drawn a conclusion that this was a general hiring, yet it is clear that they meant only to state it as a conclusion of law from the antecedent facts, the propriety of which they meant to refer to us. But there is no ground for presuming a general hiring, it appearing expressly what the agreement was, in fact, which negatives a hiring for a year."

1. Of the Contract of Hiring.

The following are instances in which the terms of agreement were, in most respects, like those in the former cases, but something was added by which it appears that a *yearly hiring* was intended.

Instances of implied yearly hiring.

Rex v. Birdbroke, 4 T. R. 245. M. Meers was removed from Stoke to Birdbroke. Order confirmed. Case:—The pauper was hired by J. Olley, farmer, at Stoke, at 3s. *per week* the year round; each was to be at liberty on a fortnight's notice, but the pauper was not to go away at seed time, hay, or harvest. He stayed in that service a year, and received his wages at different times whenever he pleased. Lord Kenyon, C. J. said, "No doubt can be entertained on this case. It does not even rest on a general hiring, for this was an express contract to serve *the year round*. But it is said that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice; but whether the wages be to be paid by the week or the year, cannot make any alteration in the duration of the service, if the contract were for a year. This, therefore, was a contract for a year, at so much a week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice: 'but the power of giving notice makes no difference;' for it has been held that an agreement to leave the service on giving a month's warning, did not defeat the settlement." (*Rex v. New Windsor*, *post*, 380.) Buller, J. said, "A hiring for a week, requiring a fortnight's notice, was never heard of." (See next case.)

But a hiring at three shillings a week "the year round," each to be at liberty on a fortnight's notice, gains a settlement. (a)

Rex v. Hampreston, 5 T. R. 205. Order of removal from Gillingham to Hampreston confirmed. Case:—The pauper, W. Gray, went to S. Hannam, a miller, of Gillingham, and agreed to serve him for 3s. 9d. *per week*; he considered himself obliged to serve his master on Sundays as well as other days, and accordingly served on Sundays. "They had a liberty of parting on a month's notice on either side." He received 1s. as earnest to bind the bargain. There was no mention of time. He continued under this contract about two years and a half, residing in Gillingham, in the house of his master. He then went to Tisbury to be inoculated, where he remained two months. Hannam then sent for him, and he was hired by him at the rate of 4s. *per week*. He continued to live with Hannam under the last contract for two years and a half, during which time he resided in his master's house in Gillingham. Lord Kenyon, C. J. "It is admitted that since *Rex v. New Windsor* the circumstance of the parties having it in their power to determine the service on giving notice, will not defeat the settlement where there is a contract for a year, and a year's service under it. (b) Neither could it be disputed that a general hiring is not a hiring for a year. In the cases cited (c) there was something to show that the parties did not intend that it should be a general hiring; one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might have been immediately determined. But 'wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, there the hiring must be understood to be a hiring for a year.' If this were not a general hiring, those who disputed that proposition should have pointed out for what time it was to continue; and indeed it has been contended to be for a month, or a month added to a week, but there is no foundation for either: for if that were so, the

Hiring at so much *per week*, and liberty to part on a month's notice, is a general hiring.

(a) A hiring to work at 2s. *per day*, there being a custom to give a fortnight's notice, is a general hiring. *Rex v. Keele*, Easter T. 1832.

(b) The power to determine the con-

tract by notice, makes it a conditional contract. See the cases under that title.

(c) *Rex v. Newton Toney*; *Rex v. Odiham*; *Rex v. Dedham*; *Rex v. Birdbroke*; *ante*, 364, and *supra*.

1. *Of the Contract of Hiring.*

Weekly wages and a month's notice is a general yearly hiring.

pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all; but there is no pretence for that; for by the terms of the contract, he was to give a month's notice before he could determine it. And this is distinguishable from *Rex v. Bradninch*, for there was a hiring for a stipulated time less than a year. In this case, independent of the first contract, the parties met again after an absence, and the pauper was a second time hired at 4s. per week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year." *Ashhurst, J.* "On the second hiring an observation arises from the difference of expression, for there the pauper was hired at the rate of 4s. per week, words which clearly refer to the quantum of wages, and not to the duration of the contract." *Buller, J.* "What Lord Kenyon said in *Rex v. Birdbroke* has been misapplied. His lordship had disposed of the former part of the case, namely, that there was a hiring for a year; and then he added, the power of giving notice makes no difference." (a)

Rex v. Great Yarmouth, 5 M. & Sel. 114. Case:—The pauper let himself by the week to a journeyman baker, and was to have 5s. per week wages, food, and lodging, and either party to be at liberty to part, by giving a month's notice. The pauper stated that he let himself by the week, but nothing passed as to his being hired by the week, except that he was to have 5s. a week wages. He served three years and a quarter, and quitted upon receiving a month's notice. His wages were paid at the end of a week, fortnight, or month, as he wanted them. Lord *Ellenborough*, "I do not think any material argument arises from its being first found that the pauper let himself for a week, because it is explained by the statement that follows. The facts are to be taken together, without reference to the order in which they are found; and the sessions have concluded that the hiring was indefinite. The first fact is, that the pauper let himself by the week. But to discover if this was intended as the measure of time for which the service was to endure, we must look to the context and see how the contract was determinable. We find then that either party was at liberty to determine it by giving a month's notice. Can any one say that it is a weekly hiring, when the parties were not at liberty to part without a month's notice? I cannot say so. What then is the effect of a month's notice? It does not follow from thence that it was a monthly hiring, or for any definite number of days. Wherefore as there is no limited duration to be assigned for the service, the law implies that it is for a year. This mode of considering the subject is strengthened by adverting to the fact, that the pauper stated that nothing passed as to his being hired by the week, except that he was to have weekly wages. It is therefore, in common sense and intendment, a hiring of which no certain portion of time can be predicted for its duration, and is consequently a general hiring." *Bayley, J.* "The sessions could not mean to find that there was a distinct weekly hiring, and upon that, to submit that same question to us." *Abbott, J.* concurred. *Holroyd, J.* said, "This is

(a) The case of *Rex v. Bradninch*, cannot be reconciled with these cases, and must be considered as overruled. It was as follows. (*Rex v. Bradninch*, H. 10 G. 3, Burr. S. C. 662; 2 Bott, 293; 1 Nol. P. L. 373.) Removal from Bradninch to Shobrooke confirmed. Case:—The pauper came to S. Ruddall, in Crediton, and agreed to live with him by the week, at two shillings and sixpence per week, and to part at a fortnight's or month's notice. The pauper being asked "how long he intended to live with Ruddall," replied, "he did not know, but as long as they liked." The pauper lived with Ruddall for eight years under that agreement, the pauper and master being both at liberty to part from each other

on a fortnight or month's notice. The pauper received his wages of two shillings and sixpence per week, sometimes at the end of the week, sometimes at the end of a fortnight, and sometimes longer, as he wanted money. It was argued that this could not be taken as a hiring by the week only; because they were not to part but at a fortnight's or a month's notice, which is inconsistent with the idea of hiring only by the week. But Lord Mansfield, C. J. observed, "that this pauper was under no obligation to serve for a year: whereas, in order to gain a settlement, there must be an obligation upon the pauper to serve for a year." (See Lord Kenyon's remarks on this case in *Rex v. Hampreston*, ante, 369.)

not a hiring for a month, for then it would be determinable only at the completion of each month's service, whereas this might have been determined at the expiration of a month's notice, without regard to whether it expired at the month's end or not." (a)

Rex v. St. Andrew, Pershore, 8 B. & C. 679. The pauper was hired as a horsekeeper, at 1*l.* a week. The terms were a month's warning or a month's wages. No further mention of time. *Bayley, J.* "The sessions had no premises to warrant their conclusion. The stipulation for a month's wages or month's warning rebuts the presumption of a weekly hiring. It was thence manifest that it was intended that the service should continue for a longer period than a week. It then became a hiring unlimited in duration, and the law implies that that is a hiring for a year." Order of sessions quashed.

1. Of the
Contract of
Hiring.

7. Hiring by the Job.

7. Hiring by the
Job.

If a pauper is hired to do a particular job, which may occupy him a year, it is not a hiring for a year; but it *may* be a hiring for a year, though the wages are regulated according to the quantity of work done.

Rex v. King's Norton, 2 *Stra.* 1139; 2 *Sess. Ca.* 146; 1 *Nol. P. L.* 378. M. Calcut was hired for a year to spin yarn at 1*s.* 6*d.* a stone, and was to provide herself with victuals and lodging. She spun the whole year, and boarded and lodged at her master's, allowing 2*s.* a week for the same. By the court: "This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And whether she was paid by the year, or by the quantity of her work, was immaterial." (See *Rex v. Byker*, *post*, 374, 375.)

Hiring for a year to spin yarn at so much *per* stone, will gain a settlement.

Rex v. Birmingham, *Doug.* 333; *Cald.* 77; 2 *Bott.* 217. Case:—T. Baker was hired in Birmingham by J. Jennings a wood-screw-maker for a year, "good earn, good hire," to work for him and no other master, to make screws at so much *per* gross: and this was all that passed. Persons are often hired at Birmingham under the terms "good earn, good hire," the meaning of which is, that their pay is to depend upon their work. Baker had no wages; he was to have what he got. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring, and sometimes lodged with his master, sometimes in another house; when he lodged with his master he paid him for it. He sometimes absented himself to drink or play for a week or a fortnight, and never asked his master's leave for such absence. His master on his return was angry, and checked him, but always received him again. During such absence he never worked for his master, nor did he or could he for any other person. Baker had said to his master he could not compel him to work, and the master thought he had no right to compel him. It is generally understood at Birmingham, that persons hiring to work in shops, under the above terms, may occasionally absent themselves, but cannot work for another master. The court, after discussing all the cases, considered that this was a good hiring and service.

A hiring "for a year" to make screws at so much *per* gross, "good earn good hire," will gain a settlement.

Rex v. Woodhurst, *H.* 58 *Geo. III.*; 1 *B. & Ald.* 325. Removal from St. Ives to Woodhurst. Order confirmed. Case:—In 1809 the pauper was hired by W. Margetts of St. Ives, brickmaker, to work in St. Ives under a written agreement, which Margetts states to be lost, and to be as follows: "I G. H. have this day agreed to serve W. M. as a brickmaker, from Michaelmas to Michaelmas again. G. H. engages to make 70,000 bricks at so much for digging and turning, so much for moulding and making, and so much for running to the kiln." Nothing was said as to the time he was to begin to dig; he probably began in November, and then worked on the kilns under that contract, not having finished his 70,000 bricks till after Michaelmas following. As soon as the pauper had made the 70,000 bricks, according to his

Hiring to make a limited quantity of bricks gives no settlement.

(a) *Beeston v. Colyer*, 4 *Bing.* 309; 12 *Moore*, 552. The plaintiff became a clerk to defendant in March, 1793. In 1811, his salary was paid quarterly,—for the last six years, up to 1826, monthly. He was dismissed in December, and the court held that this was a general hiring.

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A person's agreeing to live with his step-father, to work with him and to be paid at a certain rate for his work, is not a general hiring for a year.

contract, his master had no control over him and he might go where he pleased, even if it was a month before Michaelmas, and if he stopped and made more than 70,000 bricks he was to be paid for them, and the master could set him to no other work than brick-making. This was the custom of the kilns. After argument, Lord *Ellenborough*, C. J. "entertained no doubt there was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done: if the bricks were made before the year expired, his service would terminate. So that unless he finished the last brick exactly at the year's end, which would be very improbable, he would not serve for a year. It is therefore only a contract for that individual job, and the introduction of time into the agreement is wholly irrelevant." Order of sessions confirmed.

Rex v. St. Peter's, Dorchester, 1 *Bla. Rep.* 443. The pauper, from six years old, was maintained and employed by his step-father, as a button maker, without wages or contract. At the age of sixteen he went away to seek more advantageous employment, but returned soon after, and agreed with his step-father to live with him in his house, and to be paid 1s. for every gross for what he should earn at button-making, deducting 5s. a-week for his board. Under this agreement he lived with him four or five years. By Lord *Mansfield*, C. J. "This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed, hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case that there was no hiring for a year express or implied."

In *Rex v. Alton*, *Cald.* 424, the pauper agreed with his uncle for a year. During the year, the pauper being idle, he agreed to work by the piece, and find himself board, &c. The court held the services would connect, (see *post*,) and it was also added, "that the second agreement being general, would be equivalent to a hiring for a year." *Sed quære.*

8. *Of Retrospective Hiring.*

The contract for a year must not embrace any time past.

8. *Retrospective Hiring. (a)*

Rex v. Ilam, *Burr. S. C.* 304; 2 *Bott*, 356. R. Port, of Ham, hearing that the pauper was a likely boy to serve him as a postillion, sent to the pauper's father to have him upon liking. After the pauper had served Port eight weeks, Port hired him for a year, to commence from the beginning of the said eight weeks. He served Port a year (including the eight weeks) and ten days, and no longer. By *Lee*, C. J. "This case differs from all the former cases. In *Rex v. Lydney* the first hiring was conditional for a quarter of a year upon liking; and if they did like each other, then to continue for a year: yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *Rex v. New Windsor* it was uncertain till the end of the year, whether the hiring would be for a year; yet happening so in the event, it was held good. In the present case, the commencing of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past." Mr. J. *Foster* "thought the cases of *Rex v. Lydney* and of *Rex v. New Windsor* had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: but both those were hirings for a year, previous to the service, and the conditions were performed. He observed also that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties." And the court were of opinion that the pauper gained no settlement.

Rex v. Marton, 4 *T. R.* 257; 1 *Nol. P. L.* 361. The pauper being at the time under age, went into the service of W. Fisher, in Marton, and stayed about a fortnight or three weeks without any hiring. The pauper's father then made an agreement with Fisher for the pauper to serve him for a year, at 2s. 6d. per week. The time he had then served was to make a

Retrospective hiring not sufficient.

(a) See division of the subject, *ante*, 331.

part of, and be reckoned in, the year. He stayed in Fisher's service upwards of fifteen months from his first coming, and he received his wages according to the above agreement. It was admitted by the counsel who was to have supported the order of sessions by which the settlement was adjudged to be in Marton, that the order could not be supported, because according to *Rex v. Ilam*, and *Rex v. Hoddesdon*, *Cald.* 23, a retrospective hiring was not sufficient. (See also *Coombe v. Westwoodhay*, *ante*, 358.)

1. Of the
Contract of
Hiring.

9. Hirings made purposely to avoid a Settlement. (a)

9. Of Hirings
made to avoid a
Settlement.

A master may hire a servant for a less period than a year, for the express purpose of preventing the servant from gaining a settlement by such hiring and service. But this must be done *bonâ fide*, for if the contract was *really* for a year, though ostensibly or colourably for a shorter time, the settlement is not to be thus defeated. (See *Rex v. Little Coggeshall*, 6 *Maule & Sel.* 204; *ante*, 362.)

Congleton v. Porteson, 10 *East*, 130; *Collison v. Lettson*, 2 *Marsh. Rep.* 1; 6 *Taunt.* 224. A covenant not to hire servants, so that they shall gain a settlement, is valid; but does not run with the land, so as to bind assignee.

A covenant not to hire, so as to gain settlement, is valid.

Rex v. Mursley, 1 *T. R.* 694. W. Coleman, the pauper, *three days after Michaelmas*, 1782, was hired by J. Pollard, of Mursley, to serve him in husbandry *until the Michaelmas following*: he served that time, and received his wages. At the time of hiring, Pollard told him he should not belong to Mursley. The sessions stated it as their opinion that all such transactions on the part of masters are fraudulent, to prevent servants gaining settlements: and adjudged that the pauper gained a settlement. But by the court: "It is very clear that this is not a hiring for a year so as to gain a settlement." And as to the question of fraud, *Buller, J.*, said, "That only arises where in truth there is a hiring for a year, and a service for a year, and the parties endeavour to colour it, in order to prevent the settlement: in such a case the court may say it is fraudulent; but a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement." Both orders quashed.

Hiring three days after Michaelmas till the Michaelmas following gains no settlement, although such contract be made with a view to prevent a settlement.

Rex v. Houghton, *Fol.* 137; 1 *Str.* 83; 10 *Mod.* 392. J. Evans was hired with Trubshaw, of Haughton, from Ash Wednesday to Christmas, and served him that time. Then he went away from him, and stayed with his father in Ranton about a week. Then he returned to T. and was again hired with him for eleven months, and served him for eleven months. Then he departed from T., and took his clothes with him, and was absent one week. Then he returned to T., and was hired with him for eleven months, and accordingly served him; and then left that service, and went to his father in Ranton, and stayed about one week. Then Evans served one Sutton, of Haughton, for about three weeks, then returned to Ranton, and stayed for about a week: and then returned to Sutton, and hired with him for eleven months, and served with him within a fortnight or three weeks of the last eleven months, when, by agreement with Sutton, to avoid a settlement in Haughton, he left him, took his clothes, and went into Gnosall, and there continued about a week; then returned to Sutton, and continued with him so long as to make up his service for the last eleven months; and three weeks before Christmas, Evans hired himself again to Sutton for another eleven months, and served him from that time till within three weeks of Michaelmas following, and then came away, and married. The question was, whether these several hirings were sufficient to gain a settlement in Haughton. *Parker, C. J.*, said, "This was an apparent fraud, and different from all the other cases." *Pratt, J.*, said, "I doubt we must take the law to be that there must be a hiring for a year, and a service for a year. Here the sessions have found specially, that there is neither hiring nor service for a year. And suppose a man that lives in a parish encumbered with poor, hires a servant for eleven months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such

So, hiring for eleven months, though so limited to prevent the gaining a settlement.

(a) See division of this subject, *ante*, 331.

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hiring and service gain a settlement? And as to the matter of fraud, if there be any, the justices of the peace are judges of that." *Eyre, J.*, was of the same opinion as *Pratt, J.*, (*Powis, J.*, being absent.) Afterwards, in Easter term, after long consideration, the opinion of all the court was that these hirings and service in Haughton were not sufficient to gain a settlement: and though such hirings as in this case do defeat settlements, yet if that be a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands.

But a hiring for eleven months, and to give one month over, gains a settlement.

Rex v. Milwich, 2 Burr. S. C. 433; 2 Bott, 306. T. Thacker was hired at Milwich for eleven months for four pounds ten shillings, and it was agreed between him and the master that he should give in a month's service beyond the eleven months. He served the eleven months, and also the given-in month, except the last three days, and he could not say whether he served them or not; but he received the whole four pounds ten shillings wages. It was moved to quash these orders, because this was not a hiring for a year, being only for eleven months; nor a service for a year, because three days were wanting at the end of it. But the court were very clear, that this agreement was a manifest contract to serve for a year, notwithstanding the form of expression (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion.) The real question was no more than whether eleven and one make twelve? There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is to serve twelve months for four pounds ten shillings. And what signifies the variation of expression? Every contract to serve is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have lain for the wages till the end of the whole twelve months. And as to the servant's going away three days before the end of the year, the state of the fact doth not support the objection. He could not say whether he did or not. But he received the whole four pounds ten shillings wages, which at least seems to imply the master's consent or permission. (See *Rex v. Sulgrave*, 1 T. R. post, 178.)

10. *Of Conditional Hirings.*10. *Of Conditional Hirings. (a)*

Although the 8 & 9 W. III. c. 30, s. 4, seems in express terms to require an *absolute* hiring for an entire year, viz. *for one entire consecutive period of 365 days*, (*ante*, 329), yet in the construction of it, as well as in the statute relating to a settlement by a yearly tenancy, it suffices if there be a *conditional* hiring for a year, *determinable in a certain event* by either party, accompanied with an *actual service* for a year. See the rule stated by *Bayley, J.*, in *Rex v. Byker*, (*infra*, 374, 375), and *Rex v. Herstmonceux*, 7 Bar. & Cres. 556. But although the hiring may be *conditional*, it must not be *exceptive*. The distinction between them is clearly explained by Mr. Justice *Bayley* thus—"A conditional hiring is where the contract is for the entire year, but a provision is introduced that, on a given event, it shall be competent to either party to suspend or put an end to the service. If neither party avails himself of the condition, the contract becomes absolute. But in an exceptive hiring, the relation of master and servant cannot subsist through the year, unless they enter into some further arrangement. It is no objection to the contract, that there is an *implied* exception by the custom of the country, in a particular trade, or by the general law of the land. But any limitation as to the number of working hours is an exceptive hiring, and will not gain a settlement, *Rex v. Birmingham*, 9 Bar. & Cres. 925, 4 Man. & R. 691, (*post*, 388), but see *post*, 375. *Rex v. Byker* affords the best illustration of these rules.

A pauper was by indenture hired for a year as a driver in a colliery, at the wages of one shilling and ten-

Rex v. Byker, 2 B. & C. 114; 3 D. & R. 330; 2 D. & R. Mag. Ca. 15; 1 Nol. P. L. 379. Order of removal of W. Gray from Haughton-le-Spring to Byker was confirmed, subject to a case. By an indenture of the 23d of October, 1809, made between J. Potts of Byker of the one part, and the several persons whose names or marks were thereunto subscribed of the other

(a) See division of this subject, *ante*, 331. And as to conditional tenancies, *post*, "Of Settlement by Estate," 9.

part; J. Potts did hire the several other parties thereto, and they did bind themselves, as workmen or servants, to be employed in a certain colliery for a whole year, from the 21st day of January, 1810, and to serve J. P. in the colliery for certain wages mentioned; and J. P. did covenant to pay to every driver, for every good day's work, not exceeding fourteen hours in single-shaft pits, (and 2d. per day when that time was exceeded,) 1s. 10d. And the several persons hired did covenant with J. P. diligently to perform and obey his orders as to working the colliery, and to work the colliery fairly and regularly, or in default thereof should forfeit (to be retained out of their wages) 10s. 6d. for every act of disobedience, and 2s. 6d. for lying idle upon each hewer, driver, &c.: and for every working day which any of them should absent themselves from their employment, or should neglect to fulfil the whole of an usual day's work, unless prevented by sickness or some other unavoidable cause, the defaulters should forfeit 2s. 6d. for every such default or neglect, all which forfeitures should be deducted out of the wages of each offender at the first pay-day next after the offence. There was a proviso, that the indenture should not be construed to extend to exclude any justices from any cognizance which the law of this kingdom hath given to justices over masters and servants; but that the several parties should be at full liberty, upon any breach of any of the covenants, to require the aid of any justice to compel the performance, or punish any breach of such covenants, as far as by law they could if the indenture had not been made. And it was further agreed, that if J. P. should think it necessary, about Christmas, 1822, to do any thing needful to be done in the colliery, or the working of the same, that then it should be lawful for him to stop the workings for any time not exceeding seven days, without paying any wages to those prevented from doing their daily work, except such of them as should be employed in any other work about the colliery, who should be paid reasonable wages for such work. This indenture was executed by J. Potts and by the pauper, together with other workmen. Gray was a driver. When the indenture was executed, Gray was in the service of J. Potts at the colliery, and he continued in his service as a driver for a whole year, from the 21st of January, 1810, till the 21st of January, 1811, and resided during all that year in Byker. There was no evidence, either that the pauper had or had not incurred any penalty or forfeiture during his year's service under the indenture, or that any deduction had or had not been made from his wages. Bayley, J., on a subsequent day delivered the judgment of the court. "The question in this case was, whether the hiring was conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this; if the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision that in a given event it shall be competent to the parties to put an end to or suspend the service for a part of the year, still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition. A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon. An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year, unless some further arrangement is entered into; and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded; but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day's work not exceeding fourteen hours, (and 2d. per day when that time was exceeded,) 1s. 10d. It was said that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer. We are of opinion that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours. Upon the forfeitures also, we think that the pauper might not, upon payment

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pence for a good day's work, not exceeding fourteen hours, and twopence a day more when that time was exceeded; and he was to forfeit ten shillings and sixpence for every act of disobedience, and two shillings and sixpence per day for lying idle (to be deducted out of his wages). There was a proviso, that nothing in the indenture should be construed to oust the jurisdiction of the justices, or to prevent either master or servant from applying to them in cases of disputes; and a covenant, that in case the master about Christmas should wish to repair any engine, &c., belonging to the colliery, he might stop the workings for any period not exceeding seven days, without paying any wages to the pauper, unless employed in other work: Held, that this was a conditional, and not an exceptive contract.

Distinction between conditional and exceptive hirings.

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A hiring for five years, to be paid 10s. a week for the first two years; 11s. for the third; 12s. for the fourth; and 13s. for the fifth: hours of working to be from six in the morning till seven in the evening; to be paid for all over-time, and a deduction to be made for all short: Held to be not an exceptive hiring, but a hiring for five years absolutely.

of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, *minus* seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year, with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between *conditions* and *exceptions* is consistent with all the decisions. In the cases where a servant having liberty to be absent has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring and the condition not having been acted upon, the pauper gained a settlement in *Byker*. And the order of sessions was therefore right. Order confirmed. (a)

Rex v. Ossett cum Gawthorpe, 4 Bar. & Ad. 216; 1 N. & M. 21. George Clarke and family were removed from Leeds to Ossett cum Gawthorpe. Order confirmed. Case:—The pauper was born in Ossett cum Gawthorpe, and a hiring under the following agreement and service for the time therein mentioned in the respondent township were admitted. “Memorandum of an agreement made and concluded this 25th day of the fourth month, 1826, between J. and T. Walker, of Leeds, cloth merchants, on the one part, and G. Clarke, with the consent of his father, on the other part; the said G. Clarke doth agree to become the hired servant of J. and T. Walker, for the term of five years, to do such work as belongeth to the finishing of cloth, and to take any part of work the said J. and T. Walker shall think proper, and do the same to the best of his knowledge justly and faithfully; this being done, the said J. and T. Walker promise to pay unto G. Clarke 10s. per week for the first two years, and 11s. for the third, and 12s. for the fourth year, and 13s. for the fifth and last year; the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for

(a) The following correct summary is from a note by the learned reporters of the above case of *Rex v. Byker*. In *Rex v. Bishops Hatfield*, 2 Bott, 211, the pauper was hired for a year, with liberty to let himself for the harvest month to any other person. In *Rex v. Empingham*, 2 Bott, 217, the hiring was for a year, with liberty to be absent eleven days during the sheep-shearing season. In *Rex v. Arlington*, 1 M. & S. 622, the hiring was for a year, with liberty to be absent during the sheep-shearing season. In *Rex v. Turvey*, 2 B. & A. 520, the hiring was for a year from Michaelmas, to go away a month at harvest, and make up the time after Michaelmas. In each of these cases the pauper did absent himself according to the liberty reserved in the original contract; and it was held that no settlement was gained by such hiring and service. There are two cases, *Rex v. Westerleigh*, Burr. S. C. 753, and *Rex v. Winchcomb*, 1 Doug. 391, which appear to be at variance with those decisions. In each of these two cases the pauper was hired for a year, with liberty to be absent on duty as a militia man for a month, and he accordingly was absent; yet it was held that the hiring and service conferred a settle-

ment. In *Rex v. Over*, 1 East, 599, Lord Kenyon says, that the ground of those decisions was, that the leave of absence stipulated for, was no other than what the law would have compelled without stipulation. In several other cases, it has been held that implied exceptions will not prevent the gaining of a settlement, but that if they are expressed in the contract they will have that effect. *Rex v. Macclesfield*, Burr. S. C. 458. *Rex v. All Saints, Worcester*, 1 B. & A. 322. And there appears to be this distinction between them, that notwithstanding the implied exceptions, the relation of master and servant continues during the whole year; whereas that relation has been considered at an end during the excepted periods stipulated for in the contract. *Rex v. Wrington*, Burr. S. C. 280. But in the cases of the militia men, it seems that the relation of master and servant must at all events have been suspended for the time during which they were out on duty. It seems difficult, therefore, to understand on what principle those cases are sustainable; and see the observations made by the court, in *Rex v. Beaulieu*, 3 M. & S. 229.

all over-time, and a deduction to be made for all short either in sickness or in health." The question for the opinion of this court was whether G. Clarke gained a settlement in Leeds by such hiring and service. *Denman, C. J.* "It is impossible to decide this case without interfering with some former decisions; but upon the whole I think that this was not an exceptive hiring. The pauper agreed to become the hired servant of J. and T. Walker for five years, to do such work as belonged to the finishing of cloth. If the agreement had stopped here, there would clearly have been a contract to serve for five years, and the masters would have the right to command all the services of the pauper during that period. The question is, if there be any clause in the subsequent part of the agreement which clearly takes away that right. The masters promise to pay the pauper weekly wages, varying in amount yearly during the whole five years. Then comes a clause in these words, 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health.' There is nothing here to show that it was in the option of the pauper to work or not for the master in over-hours, and if not, then the right given to the master in the early part of the agreement to all the services of the pauper is not taken away. I think this was a complete bargain for all his time, and that there was not any part of that time during which the pauper could lawfully refuse to work for his master." *Parke, J.* "I am of the same opinion. I think there was no period of the day when the master could not lawfully command the services of the pauper. The true way to ascertain whether this be an exceptive contract, or not, is to consider what would have been the situation of the parties if there had been an extraordinary demand for work, and the master had called on the pauper to work during over-hours. Could he have refused? The words of the contract are, 'that G. Clarke agrees to be a hired servant for the term of five years to do work,' &c. That is the stipulation as to working, or to the service to be performed. Then the contract goes on to fix the weekly wages to be paid from year to year by the masters. Then come the words on which the difficulty arises: 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time.' Those words seem to me to be a qualification of the sentence which immediately precedes them, and which fixes the amount of weekly wages, if that be so, then the case is like *Rex v. Byker*, (*ante*, 374). It is distinguishable from *Rex v. Birmingham*, because there the pauper might at his election have worked or not for his master at over-hours. In *Rex v. Frome Selwood* the limitation as to the working hours immediately followed the stipulation for service. Here, between that clause and the one specifying the number of hours the pauper was to work, the clause intervenes fixing the amount of weekly wages. It appears to me that the pauper could not lawfully refuse to work for his master during the over-hours (if required so to do); but that the latter was entitled to the whole services of the pauper during the five years, and consequently this was not an exceptive contract." *Taunton, J.* "The cases undoubtedly run very near to each other. Certainty in sessions law is very important, and I am sorry, therefore, I cannot come to the same conclusion as my lord chief justice and my brother *Parke*. This case appears to me not distinguishable from *Rex v. Birmingham* and *Rex v. Frome Selwood*, and they being the latest cases on this subject ought to govern this. It is said that in *Rex v. Birmingham* the pauper was to do over-work only if he chose. Looking at the terms of the present contract, I think it was optional in the pauper here also to work over-hours or not. The hours of working are defined to be from six o'clock in the morning till seven in the evening. I cannot see why this limitation of the hours of working was introduced, unless it were as an exception in the contract. It is said that it refers only to the amount of wages, I think it refers to the time of working as well, and that the pauper might have refused to extend his time of service beyond those hours, and then it is not distinguishable from *Rex v. Birmingham*; nor can I distinguish it from *Rex v. Frome Selwood*. It does not signify much in what part of an instrument a particular stipulation occurs, unless it be so placed as necessarily to qualify only the

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words immediately preceding. Now I cannot consider this clause a mere regulation of wages, but I think it also limits the time of work. Without wishing to multiply distinctions in a branch of the law in which they are already too abundant, I must add, that the present is the case of a servant hired to perform manufacturing work, and it is well known that exceptive contracts are extremely frequent on such occasions. This may in some degree furnish a key to the meaning of the parties, and assist in explaining their intention, and in affirming the order of sessions I think we should not only fall in with the last two cases, but also with the general current of authorities." *Patteson, J.* "I am of opinion that a settlement was gained. *Rex v. Byker* and *Rex v. Frome Selwood* turn on very nice distinctions. The question in this case is, whether the pauper was bound to serve more than the number of hours mentioned in the agreement. I thought for a considerable time that the case fell within *Rex v. Frome Selwood*, but looking at the terms of the contract, and the place in which the stipulation as to the number of hours occurs, I think that it was introduced merely to regulate the wages, and that the pauper could not refuse to work for his master beyond those hours. I feel great difficulty in distinguishing one case from the other, but upon the whole it seems to me that the present falls within *Rex v. Byker*." Order of sessions quashed.

A pauper agreed with the owners of a colliery to work constantly in the said colliery from 4th February, 1815, to 4th February, 1816, or to forfeit and pay to his master 1s. for each and every day he should absent himself from his work or not work a reasonable day's work to the satisfaction of his master: Held not an exceptive hiring.

Rex v. St. Helen's, Auckland, 4 B. & Ad. 718; 1 N. & M. 462. An order for removing George Riley from Coundon to St. Helen's, Auckland, was confirmed. Case:—The pauper was bound as a pitman to Dixon and Co. the owners of the Eden Main Colliery, situate in West Auckland, by bond or memorandum of the 4th of February, 1815, between G. D., J. D., and E. D., as copartners in the said colliery, of the one part, and the several pitmen whose names were thereunder written, on the other part; whereby it was witnessed that the pitmen, in consideration of the wages to be paid as after mentioned, did thereby severally agree with the said copartners or masters to hew, pit, and work coals within the said colliery, from the day of the date thereof for and unto the 4th day of February, 1816, in the manner and at the prices following; that is to say, to hew coals at 2s. 6d. a score, of twenty-five corves to each score; the said pitmen also agreed to give to the said masters the usual fire coal corf for each day they were at work, over and above the said number of twenty-five corves to each score; and further, to drive their boards of such a breadth, and to prop and maintain their own work, and to work in a workmanlike manner, properly, fairly, and orderly, as directed by their said masters, or their agent for the time being, and to drive headways at 8d. a yard, and headways walls at 6d. a yard, when, where, and in such a manner as directed by the said masters or their said agent; and further, the pitmen agreed to send as many setters to bank as the seam would admit and afford, and also to put coals in their course at the prices then given, and to have the liberty to hew half-a-score of coals in the putting morning, which were to come to bank the same day. "And the said pitmen do hereby further severally undertake, promise, and agree to work constantly at the said colliery until the said 4th day of February, 1816, or to forfeit and pay each man to the said masters, or their said agent, one shilling for each and every day that he shall absent himself from the said work, or not work a reasonable day's work, to the satisfaction of the said masters, or their said agent. And, on the other hand, the said masters for themselves agree to pay to each said pitman one shilling a day for each and every day they shall wilfully or without just cause lay any of them off work." The pauper served under this bond for a whole year, and received his wages, and during that period there was no forfeit incurred either by him or his employers by reason of any interruption of the work in the colliery or otherwise. He remained in the service of the same employers as a pitman for eleven months after the expiration of the bond, and from the date of the bond to the time of his finally quitting the colliery, a period of nearly two years, he slept in the appellant parish. The question for the opinion of this court was whether this was a service under such a yearly hiring as would confer a settlement. *Denman, C. J.* "The decisions in *Rex v. Byker* (3 D. & R. 330; 2 B. & C. 114, ante, 374), and

Rex v. Gateshead (3 D. & R. 333, 2 B. & C. 117, *post*, 384), run very near each other; but there is a distinction between them, and I think the former case an authority in favour of a settlement here. It is said, that in this contract there is an exception, because an option is given to the pauper either to work or to forfeit and pay 1s. upon each day that he absents himself, or does not work a reasonable day's work to the satisfaction of the master. In *Rex v. Byker* the pauper by indenture was hired for a year as a driver in a colliery, and the master covenanted to pay wages at the rate of 1s. 10d. for a good day's work, not exceeding fourteen hours, and 2d. a day more when that time was exceeded; and the pauper was to forfeit 2s. 6d. per day for lying idle, to be deducted out of his wages. It was contended that that was an exceptive contract, because the master could not compel the pauper to work more than fourteen hours a day, and also because the pauper on the payment of 2s. 6d. per day was at liberty to absent himself. But the court held that the fourteen hours was only mentioned in the master's covenant to regulate the amount of the wages, and that the relation of master and servant continued during the whole twenty-four hours of every day, and consequently during the whole year, and that the clause as to forfeitures was intended not to give the servants a liberty to absent themselves, but merely to enforce regular attendance. The same observation applies to the clause of forfeiture in this case. In *Rex v. Gateshead* it was stipulated that each man should on each working day do such a quantity of work as should be equal to a full day's work, and should not leave the pit until that quantity was completed, or in default thereof should forfeit 2s. 6d. There, as soon as each man completed his full day's work, he was at liberty to quit, and was no longer under the control of his master. According to the report of that case in 3 *Dowland and Ryland*, it was part of the contract of hiring that the labourers were to work for the whole year, except ten days during the Christmas holidays, when they were not to work, nor to be liable to any penalties for not working. If that were a correct statement of the contract, there would be a clear exception of ten days. It appears, however, from the reasoning of the judges there given, that the hiring was held to be exceptive, not because the pauper was not bound to work for his master during the ten days, but because he was not bound to work during the whole of every day, but during such part of the day only as might be required to complete a full day's work. The contract, as stated in 2 B. & C. 117, and 3 D. & R. 333, was that the master should find work for the men during the whole year, and forfeit 2s. 6d. for every day that he should oblige them to be idle, except at the Christmas holidays, which were not to exceed ten days. According to that statement the stipulation as to ten days would appear not to be an exception in the contract of hiring intended to give a privilege to the servant, but to be a provision introduced for the benefit of the master, and considering the reasons on which the judgment of the court was founded, that must be taken as the correct report of the case. I think, therefore, this case falls within *Rex v. Byker*, and that a settlement was gained in the parish of St. Helen's, Auckland. The order of sessions must be confirmed." *Littledale, J.* "If the cases referred to had never been decided, I should not have had the slightest doubt on this case. By the agreement of the 4th of February, 1815, the pauper agreed to hew, pit, and work coal till the 4th of February, 1816, and to work constantly at the colliery, or to forfeit 1s. for each and every day he should absent himself or not work a reasonable day's work. Now the latter stipulation bound the pauper to pay 1s. per day if he did not perform his part of the contract. There was a contract to work for a whole year, and every day in the year, and the master had a right to call on the pitmen so to work. The mere agreement to pay 1s. per day as a forfeiture does not make the contract exceptive, because neither party can be supposed to have contemplated at the time when the contract was entered into that there should be an absence or neglect to work." *Parke, J.* "I felt some little difficulty at first in distinguishing this case from *Rex v. Gateshead* (2 B. & C. 117, 3 D. & R. 333, *post*, 384); but I think it falls within *Rex v. Byker* (2 B. & C. 114, 3 D. & R. 330). In the first of those cases there was a stipulation that each man

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A hiring at wages, payable quarterly, with liberty to part on a month's notice at the end of any quarter, is a yearly hiring.

A hiring at five pounds per year wages, with liberty to part at a month's wages or warning, is a yearly hiring.

Hiring conditional as to liking, a good hiring for a year, where the service continues so long.

The pauper having served one year, the master expressed his fear that the pauper would not be strong enough for the work in a town to which they were going,

should on each working day do a full day's work, and that he should not leave the pit until that quantity of work was completed; and that on default thereof he should forfeit 2s. 6d. It was therefore stipulated by implication that the men were not to be under the control of the master on days which were not working days, nor on any day as soon as a full day's work was completed." Order of sessions confirmed. (a)

Rex v. Atherton, Burr. S. C. 203; Bott, 360. R. Harrison was hired for a year by T. Barlow of Barton, at 4*l.* wages, payable quarterly. And it was agreed that either should be at liberty to determine the contract at the end of any quarter, on a month's notice. No notice was ever given, and the servant continued in the service the whole year. The servant declared at the time of the hiring that the reason of the hiring being made determinable at the end of every quarter upon notice, was, that he would not be hired so as to lose his former settlement. But by the court unanimously and clearly: "This is a good settlement."

Rex v. New Windsor, Burr. S. C. 19; 2 Bott, 248. D. Brookes was hired to Colonel Merrick at Thorpe, and was to go into her service a month upon liking, and was to have 5*l.* a-year wages; but was to go away from her service on a month's wages or a month's warning on either side. She continued near two years in this service without any other hiring, and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year. (b)

Wandsworth v. Putney, 2 Bott, 288. The master told a boy coming into his service, that if he stayed a year and behaved well, he would give him a livery and wages the next year; this was held to be a clear yearly hiring.

Rex v. Lidney, Burr. S. C. 1; 2 Bott, 358. M. Brewer was hired to W. Wake for a quarter of a year; and if her master and she liked one another, she was to continue for a year, and to have 3*l.* for her year's wages. She entered into the service, and continued one whole year, and received the 3*l.* It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year, since the master and she did like one another, and a year's service was actually performed under it.

Rex v. St. Ebbs, Burr. S. C. 289; 2 Bott, 361. C. Guy was removed from Holywell to St. Ebbs. Order confirmed. Case:—The pauper was hired to T. White of Holywell, to come for a quarter of a year, and to have after the rate of 20s. a-year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in Holywell by this hiring and service; for a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to show cause, but no cause was shown. And the rule was made absolute. See *supra* the cases where the pauper might quit, or be turned away at pleasure.

Rex v. Sandhurst, 1 Man. & R. 95, 7 B. & C. 557. A hiring for a year, by an officer of a military college, reserving the right of dismissing the pauper without notice, is a good hiring for a year. (See this case, *post.*)

Rex v. Northwold, 2 D. & R. 790; 1 D. & R. Mag. Ca. 413. The pauper was hired and served for a year with his master at Northwold. The other facts are stated in the judgment of Abbott, C. J. "I am of opinion that there was a second hiring for a year to serve in Brandon, and therefore the orders must be quashed. Just before the end of the first year, the master says to the pauper, 'Will you go with me into Brandon?' The pauper says he has no objection. If nothing more passed, it is clear that that would be a hiring

(a) See *Rex v. Ossett cum Gawthorpe*, 1 Nev. & M. 421; 4 B. & Ad. 216, ante, 376.

(b) *Beeston v. Colyer*, 4 Bing. 309; 12 Moore, 552. Gaselee, J. "In domestic service there is a common understanding that such a contract may be

dissolved on reasonable notice, as a month's wages or a month's warning. There does not appear to be any such practice with respect to servants in husbandry." 2 Starkie R. 256, 7: and see Car. & Pay. 370, 510, 608.

for another year. The master then says, 'I am afraid you will not be strong enough for the work there, but try.' The meaning of that is, 'We shall contract for a year, but if upon a little trial I find you are not strong enough, then our contract is at an end.' That is a conditional hiring. The pauper tries, is found strong enough, and resides for forty days. This is a settlement." *Bayley, J.* "It is a defeasible contract for a year, and a settlement is gained." *Holroyd, J.* "This is a conditional hiring for a year, the condition being the pauper having strength enough to do the work. The contract is not in express terms for a year, but still that does not prevent a conditional hiring for a year operating." Order of sessions quashed.

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but the pauper was to try: he tried and was strong enough. He gained a settlement.

11. What are Exceptive Hirings. (a)

11. Exceptive Hirings.

The difference between *conditional* and *exceptive* hirings has been explained. See *ante*, 374 to 381, and 1 *Bar. & Adol.* 336.

Rex v. Empingham, Burr. S. C. 791; 2 *Bott*, 313. J. Langton, before Harborough fair, hired himself to H. Hubbard from that fair to the next, being one year, at the wages of 3*l.* "subject to a liberty of being absent eleven or twelve days in the sheep shearing season," and to have the benefit of what he got during that time. He entered upon the service, and served Hubbard for above three-quarters of the year. He went to shear sheep in the season, for about eleven days, and served Hubbard the remainder of the year. He received to his own use what was paid him for the sheep-shearing, besides his wages of 3*l.* One day in the season he asked his master's leave to go a sheep-shearing: his master said he was going out, and could not spare him that day; and in consequence thereof he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home. The court were of opinion that this was an exception out of the contract at the time of making it. They held it to be a part of the contract, and not to be considered upon the footing of leave of absence given by the master, who, being bound by the contract, could not refuse agreeing to it. Consequently no settlement was obtained under this hiring.

Hiring for a year, with liberty to be absent eleven or twelve days sheep-shearing, gains no settlement.

Rex v. Bishop's Hatfield, Burr. S. C. 439; 2 *Bott*, 307. A man was hired from Michaelmas to Michaelmas, for 5*l.* wages, "with liberty to let himself for the harvest month to any other person." He served till the harvest month, and then hired for that month, and received wages for it. During that month he brewed for his master, and lodged in his master's house during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the court: "This is in effect only hiring for eleven months: and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop."

Hiring for a year, with liberty to let himself during the harvest month, gains no settlement.

Rex v. Rushulme, 10 *East*, 325. The pauper was hired for four years, "with liberty to leave a week every year, to see his friends." Per Lord *Ellenborough, C. J.* "Here is a hiring for a period of four years, with an exception of a week in every year, that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year minus one week in that year, and so on." (b)

So hiring for four years with liberty to leave a week every year to see his friends.

Rex v. Leamington Priors, 8 *D. & R.* 329; 4 *D. & R. Mag. Ca.* 79. Order of removal of Sarah Penn from Middleton Cheney to Leamington Priors confirmed. The pauper was hired to Mr. Cooper in Leamington Priors, at Whitsuntide, 1823, until Michaelmas in the same year. She entered into service immediately after being so hired, and continued therein until said Michaelmas, when she was again hired by said Edward Cooper until the Christmas day following. On the day after Christmas day, the

So if the stipulation be that the servant shall have, "during the year two or three days to see her friends," it is an exceptive hiring.

(a) See division of the subject, *ante*, 331.

(b) Where it was part of the contract that the pauper should go away a fort-

night before the end of the year, this the sessions held to be an exceptive hiring, and K. B. confirmed it. *Rex v. Wiltoughby*, E. 11 Geo. IV. MS.

1. *Of the Contract of Hiring.*

Stipulation by pensioner to have two days in each half year to go and receive his pay, defeats his settlement.

Hiring for a year at weekly wages, with liberty to be absent in the sheep-shearing season, but to find a fit man at his own expense to do his work during his absence, but his own wages to go on during the whole time, will not gain a settlement.

Hiring for a year, to go away a month at harvest, and to make up the time after

mistress offered the pauper to hire her for a year, to which the pauper agreed, the pauper at the same time requiring, and the mistress agreeing, that she should have during the year two or three days to see her friends; and she accordingly had three days in February, 1824, having first asked her mistress if she might have them, to which the mistress replied, "Yes, you had better have them now, as the season will soon begin when you cannot have them." Under this latter hiring she stayed till Michaelmas, 1824, when she was discharged, in consequence of being pregnant. *Bayley, J.* "Looking at the facts of this case, there is no doubt that this was not a hiring for a year. There had been two hirings for broken periods, and at the expiration of those broken periods, the mistress proposes a hiring for a year. The pauper agrees, but with a proviso; and the proviso is, that she shall be at liberty for two or three days to see her friends. Now there are many cases which say, that if at the time of hiring there is a stipulation giving the pauper the option of being absent during any part of the year, that time is to be considered as excepted out of the contract, and treated as a hiring for a year, *minus* the time the servant is entitled to be absent." *Holroyd, J.* and *Littledale, J.* concurred. Orders quashed.

Rex v. Over, 1 *East*, 599. The pauper let himself for a year, but being an East India pensioner, he was to have two days in each half-year to himself, to go and receive his pension. *Lord Kenyon, C. J.* said "There was no colour for contending that the pauper gained a settlement by this hiring and service. The case of the militia-man went altogether upon the ground that the leave of absence stipulated for was no other than what the law would have compelled without any such stipulation. It was part of the public service; no conclusion, therefore, can be drawn from thence in support of this settlement. Here was an express exception of four days in the year, during which the pauper was not to be under the controul of the master. See *Rex v. Macclesfield* (post, 387.)

Rex v. Arlington, 1 *M. & Sel.* 622. Removal from Arlington to Wilmington. Order quashed. Case:—The pauper was hired for a year from Michaelmas, 1809, to Michaelmas, 1810, as shepherd to J. King, of Wilmington, to receive thirteen shillings and sixpence *per* week wages, and an allowance for a hog, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man, at his own expense, to do his work during the time of his absence, but his own wages of thirteen shillings and sixpence a-week were to go on during the whole time. The pauper served the year, was absent during the sheep-shearing season, and employed and paid a person to tend the flock, but occasionally returned during that period, and assisted in the management of it, especially on Sundays, and from time to time gave directions to the person employed by him. It was argued that, though working for another person, he continued the servant of King. *Lord Ellenborough, C. J.* "It has never been determined that a contract for service by deputy is service by himself. The distinction taken in all the cases is, whether the liberty of absence forms a part of the original contract, so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract. If this hiring could be deemed to confer a settlement, the consequence would be, that a person might gain as many settlements as there are forty days in one year. He might hire himself to A. with liberty to be absent with B. and C. and so on, and if he could get forty day's service with each, he might accumulate eight or nine settlements in the course of a year. Such a consequence would be preposterous. What does this hiring really mean? A hiring for a year is where the servant is to be under the control and command of his master for the whole year; but here the pauper was not to be so, but was to be at liberty to find a substitute for the sheep-shearing season. The case will scarcely bear a serious argument." Order of sessions confirmed.

Rex v. Turvey, 2 *B. & Ald.* 520, T. Smith was hired for a year from Old Michaelmas, to go away a month at harvest, and make the time after Michaelmas. He went away for a month at harvest, and continued in his master's service a month after Michaelmas. *Holbeck* and *Adams* cited *Rex v. Rushulme* and *Rex v. Buckland* in support of the order; and *Marriott* and

1. Of the Contract of Hiring.

Dwarris were heard *contra*. *Abbott, C. J.* said, "It has been decided in this court that where there has been a hiring for a year, and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, what is the meaning of the word 'year' in this statute. I apprehend the legislature clearly to have meant one entire consecutive period of three hundred and sixty-five days. Unless that were so, we might have to deduce a settlement of a pauper by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year's service. And so it would happen that a hiring for the month of August, for this and eleven successive years, would amount to a hiring for one year. I have often lamented, that in so many instances the court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. As far as the authorities go, I have always held and shall always continue to hold myself bound; but where they are silent, I shall feel myself bound to construe these acts of parliament according to the plain and popular meaning of the words." *Bayley, J.* and *Holroyd, J.* concurred.

Michaelmas, is not a hiring for a year.

Meaning of the word "year." (a)

Rex v. Edmond, 3 B. & Ald. 107. The pauper agreed to serve T. S. a bricklayer, for three years, if he so long lived, at weekly wages, and in case he should neglect his master's business, or lose any time on his own account in any one week, during the first year, then that T. S. should deduct from his weekly wages in proportion; and T. S. agreed that he would pay wages in proportion to any over-work which the pauper might do in any one week. There were similar stipulations for the second and third years of the term; and it was also agreed that in case they could not work through severity of weather in any one year in the winter time, then that T. S. should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. It appeared that the pauper served one year and a half without availing himself of the stipulation. *Abbott, C. J.* "The agreement contains in substance an engagement to work only during certain hours of the day, and I do not see what remedy the master could have had, supposing the pauper had refused to work after the usual hours. The agreement, taken altogether, seems to me to contain a promise only to serve for a part of the year." *Bayley, J.* (*inter alia*) observed, "That if by the usage of trade certain exceptions are implied or introduced, they will not prevent a settlement. There is clearly an exception here, the period of frost. The contract is not confined to the particular trade. The pauper might engage to serve other persons, and so might contract inconsistent relations at one and the same time. *Rex v. Martham* (1 East, 239), is distinguishable from the present, because there was no such express authority as this to contract a relation of service with another master; besides, that was not a general contract of service, but to serve in the particular trade of a bricklayer." *Holroyd, J.* thought the contract was for service only during the usual hours.

So an exception of certain hours or days is an exceptive hiring. (b)

Rex v. Althorne, 2 B. & C. 112; 3 D. & R. 375; 2 D. & R. Mag. Ca. 59. *John Wiggins* was removed from Mayland to Althorne. Order confirmed. Case:—The pauper, at Michaelmas, 1821, agreed with Mr. Croil, a farmer of Mayland, to live with him as his servant in husbandry, from that Michaelmas till the following, at 10s. per week for the winter half year, and 11s. per week for the summer half year; the pauper to have a month in harvest to himself, and if he and his master could not agree for the harvest month, the pauper was to harvest where he pleased. If any one offered the pauper more money than his master for the harvest month, the pauper had a right to go. At the commencement of the harvest, the master offered the pauper 5*l.* for the harvest, which the pauper at first refused, and required 5*l.* 5*s.*, but afterwards agreed to take the 5*l.*, and accordingly continued in his master's service during the whole year, and received his wages weekly. *Bayley, J.* "I am of opinion that the sessions have rightly decided that this was not a con-

A labourer hired himself from Michaelmas to Michaelmas, and by the contract he was to have a month in harvest to himself, and if he and his master could not agree for the harvest month, he was to harvest where he pleased. He afterwards agreed with his master to work for the month,

(a) But a hiring for eleven months, and the servant to give one month more, is a yearly hiring. *Rex v. Milwich*, 2 Burr. S. C. 433; 2 Bott, 210. *Man.* 687; *Rex v. North Nibley*, 5 T. R. 21; *Rex v. Buckland Denham*, Burr. S. C. 694; 2 Bott, 214. *Aliter* as to working only usual hours. *Rex*

(b) *Rex v. Norton Bavant*, 4 Nev. & v. *All Saints, Worcester*, 1 B. & Ald. 322.

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and continued in the service during the whole year: Held, that this was an exceptive hiring.

The owner of a colliery hired his workmen for a year, but they were not to be required to work during ten days in the Christmas holidays; during the working days they were to receive two shillings and sixpence per day wages, and to forfeit a penalty for neglect; they were to do such quantity of work as was equal to a full day's work; and as soon as that was accomplished they were to be at liberty to go where they pleased; there was a reservation of the jurisdiction of the justices in case of any disputes: Held, that this was an exceptive contract, and that a settlement could not be gained under it.

ditional but an exceptive hiring. There may be nice distinctions between decided cases, but I think the distinction between a conditional and an exceptive hiring is broad and intelligible. I take a conditional hiring to be that where the parties stipulate for the continuance of the service for a whole year, but by fixing the terms upon which the service is to be continued, it is left to the option of either to put an end to the contract. If the bargain is made so that it shall be co-extensive with the whole year, but with liberty to either to dissolve it, then it is a conditional hiring; but if the servant stipulates that during a period of the year he shall be absent from labour, or that with respect to a particular period of the year there shall be a new bargain when the period arrives, then it is an exceptive hiring, and no settlement can be gained. In this case there is an express stipulation that the pauper shall have a month to himself in the harvest time, and if he and the master could not then agree for the harvest month, he was to harvest where he pleased. The parties therefore do not bargain beforehand as to the wages to be paid during the harvest month, but that is to be subsequent matter of contract. This is no more therefore than a hiring for eleven months, the twelfth month being scooped out of the original contract, and subject to a new bargain." *Best, J.* "I think *Rex v. Bishop's Hatfield* is an authority in point, and though the pauper in that case hired himself to another master during the harvest, that makes no difference."

Rex v. Gateshead, 2 B. & C. 117, n.; 3 D. & R. 333, n.; 2 D. & R. Mag. Ca. 17, n. Case:—By a memorandum of agreement of 5th April, 1813, made between J. D. of the one part, and several persons therein named (of whom the pauper was one), of the other part, it was stipulated and agreed that the said persons should work at a certain colliery therein mentioned for one year, ending 5th April, 1814, on the terms and conditions, and subject to the penalties and forfeitures after mentioned. First, that the labourers should work for the whole year [except during ten days in the Christmas holidays, when they were not to work, nor to be liable to any penalties for not working.] (a) Second, that during the working days in the year, they were to receive each 2s. 6d. *per diem*, and in default of doing any work in any one of those days, they were to forfeit and pay one shilling each, as a penalty for their negligence; and third, they were not required to work the whole day, but to do such quantity of work as was equal to a full day's work, and as soon as that was accomplished, they were to be at full liberty to go where they pleased. Under this agreement the pauper served a year, and the question was, whether by such service he gained a settlement in the parish in which the colliery was situated. *Abbott, C. J.* "It is an exceptive contract, which completely negatives the idea of a yearly hiring and service. The last clause of the agreement cannot control its previous stipulations, and indeed there is no connection between the last and the preceding clauses. The mode of punishment for any breach of contract is stipulated for between the parties themselves, and supersedes the control which the magistrates in other cases would have over hired servants. Under this agreement the magistrates could not punish the pauper for leaving the service, which event is contemplated by the parties, who agree that for any default the servant shall pay certain fines or penalties for neglecting his work. In *Rex v. Edgmond* the court held that similar stipulations were express exceptions in the contract, and that the pauper did not gain a settlement by serving for a year under it. That case is directly in point with the present. It is manifest that here the pauper is not to be under the control of the master for the whole of every day." *Bayley, J.* "The pauper in this case, for any thing that appears, might have worked for any other master during the year; for if by extraordinary strength and skill he did a quantity of work which should be equal to a day's work, he was at liberty afterwards to do what he pleased." *Best, J.* "The stipulation in this case is to do a certain quantity of work

(a) The words between brackets are omitted in the statement of the case in *Barnwall and Cresswell*; and in *Rex v. St. Helen's Auckland*, *post*, the court observed "that the reasoning proceeded on the facts stated in *Barnwall and Cresswell*; that therefore must be taken as the more correct report. It seems to be an agreement for working days only." See observations, *ante*, 379, 380.

during each day, and as soon as the work is performed, the control of the master ceases.

Rex v. Polesworth, 2 B. & C. 715; 4 D. & R. 258; 2 D. & R. Mag. Ca. 202. Removal of Hannah Brindley from Polesworth to Saint Peter, Derby, quashed. Case:—The pauper's father, William Brindley, in December, 1784, agreed with William Boolows, his uncle, then resident in Polesworth, to serve him for three years, at 1s. per day, when he had work for him to do; and when he had not work for him he was not to be paid: Boolows told him at the same time he should not have work for him all the year round, particularly in the winter, and that when he had not work for him he might get work from other people. After making the agreement, William went to work in the collieries until the spring of 1785, and then went to work with his uncle, according to agreement, and remained with him about nine months, when his uncle told him he had no employment for him, and he worked several weeks with a Mr. Barrett, as a labouring man, and after that, his uncle having again work, he returned to him and continued to work for him about nine months longer, when he quitted him without his leave, and went to Birmingham, from whence he never returned to his service. He never received any wages from his uncle when he did no work for him, and never accounted with him for any wages he received from other people when absent from his service. After hearing *Reader* in support of the order, *Goulburn*, contra, was stopped by the court. *Abbott*, C. J. "In this case the master tells the pauper at the time when he is hired that he shall not have work for him all the year round, particularly in the winter, and when he had not work for him he might get work from other people. There is merely a hiring for so much of the year as the master has work for him. He has the control over the servant so long as there is work for him. As soon as there is no work the servant ceases to be under the control of the master, and is at liberty to get work elsewhere. We are all of opinion that there was not any hiring for a year." Order of sessions quashed. (See also *Rex v. South Killingholme*, ante, 361.)

Rex v. Chertsey, 2 T. R. 37. The pauper was hired for a year to Mr. Shirley for 4l., and served out that year in Chertsey. About three weeks before that service expired, her father, a day-labourer, in consequence of his wife's death, came to the pauper and applied to her to come and live with him to do the offices of a servant for a year in Thorpe, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. Shirley's, her father was to make up the difference. She agreed to those terms, and came accordingly and lived with her father at Thorpe for a year and upwards, during which time she got about one guinea and a half by keeping fowls, and two guineas and a half by going out chairing, and taking in plain work; and at the end of the year her father gave her 10s. as an additional recompence for her having gone to reap with him in the harvest month. *Ashhurst*, J. "As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states that the pauper's father applied to her to come and live with him to do the offices of a servant for a year on certain terms, which she agreed to, and that she came accordingly, and lived with him in pursuance of that agreement for a year. Then it was objected that the contract was not binding; but that is not so; she was hired to do all the offices of a servant for a year: the terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all his work, and consistently with that she was at liberty to gain as much as she could earn by her own labour; this therefore was a good hiring for a year." *Grose*, J. "According to the terms of this contract she was not at liberty to desert her father's service; she was only permitted to do what other work she could consistently with her father's service, and her earning beside that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the

1. Of the Contract of Hiring.

As long as the master has work. An agreement to serve for three years, at 1s. per day when the master had work to do, and when he had no work, servant was not to be paid: Not a hiring for a year.

But if a daughter go to her father for a year, "to do the offices of a servant," it is a good hiring, although it is agreed that she may earn what she can by her own labour besides.

"To do the offices of a servant."

What is evidence of a hiring.

1. *Of the Contract of Hiring.*

Hiring for a year, with liberty to be absent a month in the militia, if requisite, gains a settlement. (a)

pauper lived with her father for a year in pursuance of that agreement." Both orders quashed.

Rex v. Westerleigh, Burr. S. C. 753; 2 Bott, 312. W. Ayliff was hired for a year to A. Tyler, of Old Sodbury, to serve her for a year, but he told her that he was in the militia, and he might be absent about a month in the year to attend on that duty, but that he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he should be absent. He served her till May following, and then attended the militia for thirty days, and afterwards returned to his service with A. Tyler, and continued there until the end of his year, and then made her an abatement of 8s. out of his wages for the time he was absent. Lord Mansfield was not in court. Mr. Justice Aston thought this case reconcileable to *Rex v. Beccles* and *Rex v. Goodnestone*, Burr. S. C. 251 (*post*), and distinguishable from that of *Bishop's Hatfield*, that absence for a particular time, with the master's leave, not agreed for at the time of hiring, doth not dissolve the contract. But in the case of *Bishop's Hatfield*, the original hiring was with liberty to let himself for the harvest month to any other person. This made a clear chasm in the original contract. It was plainly a hiring for less than a year. In the present case a man is hired for a year, to serve for a year, but mentions an event that might happen of his being called out to attend his militia duty, and told his mistress that if it should so happen, he would either pay a man to serve in his place, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service." Mr. Justice Willes premised that settlements ought to be favoured, and that militia men ought not to have any additional hardship put upon them if it can be avoided. However, he could not help thinking that the case of *Bishop's Hatfield* was very like the present case, and that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed either to find a substitute or to abate out of his wages. Now this was at the election of the mistress; and she dispensed with his absence upon an abatement out of his wages. Upon this distinction, and this only, he would, for the advancement of settlements, distinguish this case from that of *Bishop's Hatfield*. Mr. Justice Ashhurst said that in a case which might affect a vast number of militia men, he was for leaning in favor of their gaining settlements; and he thought this case to be distinguished from that of *Bishop's Hatfield*. That case was certainly no more than a hiring for eleven months. But here was an alternative; it might happen that the servant should not be called out. Therefore he concurred in supporting the settlement.

So a hiring for a year, at so much per week, and to serve a month at the end of the year, as he should be absent in the militia for a month of the year, gives a settlement. (a)

Rex v. Winchcomb, Dougl. 391; 1 Nol. P. L. 383. The pauper hired himself in Chipping Norton five weeks before Michaelmas for a year; and at the time of the hiring it was agreed between him and his master, that his wages should be paid weekly, at 8s. a week, and that being a balloted man in the militia, he should be absent for a month, and in lieu of that month should serve another month at the end of the year. He was accordingly absent thirty days in the militia, and then returned to his service, but he only continued three weeks of the month, which was agreed to be served in lieu of his absence in the militia, leaving his master a fortnight before Michaelmas. He expressly swore that he did not serve his master a year by one week. It was objected that this was no hiring for a year, nor any service for a year at Chipping Norton. By Lord Mansfield, C. J. and the rest of the court: "There is in this case a hiring for a year; and there is also a service for a year, if it were not for the month's absence in the militia. A service must be for a continuation without interruption or adding together broken pieces to make up the year. But here the agreement as to the absence for a month in the militia was only what would have been implied,

(a) In *Rex v. Elmley Castle*, ante, 338, Taunton, J. observed "that these two cases were decided by men eminent for their knowledge of the law of settle-

ment; that he had been eighteen years at sessions, and never heard them questioned."

and what the master must have consented to. The year was completed five weeks before Michaelmas, and the additional month agreed for was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like *Rex v. Westerleigh* (*ante*, 386). The court ought to lean in favour of settlements; and the bad consequences would be very extensive if we were to determine that a man shall lose his settlement by serving his country in the militia. We are all of opinion that this is a good settlement at Chipping Norton."

Note.—These cases are inserted here as Lord Mansfield gives as a reason for his judgment that the agreement for absence would have been implied if not expressed. (See as to these cases, *Rex v. Holsworthy*, 6 B. & C. 283; 9 D. & R. 332.)

1. Of the
Contract of
Hiring.

12. Hiring with Limitation of Working Hours. (a)

12. Of Hiring
with limitation,
&c.

There is also a class of hirings in which it is not the intention of the parties to except any portion of the year out of the agreement, but in which a stipulation is introduced as to the number of *working hours*. The effect of such stipulations upon the question of settlements will be seen in the following cases.

Rex v. Macclesfield, Burr. S. C. 458; 2 Bott, 300. The pauper was hired, with the consent of his mother, to work in Macclesfield at a silk mill there for the term of three years, at 6*d.* a week for the first year, 9*d.* a week for the second year, and 13*d.* a week for the third. The master was not to find diet or lodging; and *the service was to be only eleven hours in the six working days*; and all the rest of the time, as well as on Sundays, he was to be at his own liberty and his own master. He continued three years in the service: but within that time frequently absented himself from his work, sometimes for a day or longer, at other times for several hours in the day; for all which deductions were made out of his wages. He lodged the three years with his mother at Macclesfield, who received his wages; which not being sufficient to maintain him, the overseers of Sutton contributed 6*d.* a week during the whole time towards his maintenance. The question was, whether this was sufficient to gain a settlement at Macclesfield? By Lord Mansfield, C.J. "Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it be a settlement as a hiring for a year and service for a year? The pauper was an infant of only eight years of age, at the time of the hiring, therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable at his own election.) But the master could not oblige him to stand to it. Then as to the contract itself, it was only to serve eleven hours in the day of the six working days, but during all the rest of those days and the whole Sunday the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain Sutton did not understand it in this light, having contributed to the child's maintenance during the whole three years."

Hiring to work for three years, eleven hours a day, the rest of his time and Sundays to be his own, is not a yearly hiring.

Rex v. Kingswinford, 4 T. R. 219. Case:—The pauper J. Lockwood agreed with W. Bullock to serve him as an artificer in the art of a glass-grinder or in any other art he should think proper to employ him in for seven years; and he was not during that time to work for or to serve any other person, nor depart from his work without the leave of his master, *but would continue and be in such service as aforesaid from six o'clock in the morning till seven in the evening of each day during the said term, including half an hour at breakfast and one hour at dinner times (except on Sundays), if in proper health*. His master was to find him shop-room, and to pay him three shillings and sixpence *per* week during the term, and to provide him meat, &c. He served Bullock two years under this agreement. He occasionally worked in

Service under a hiring for seven years, to work only thirteen hours a day (and Sundays excepted), will not give a settlement.

(a) See division of the subject, *ante*, 331.

1. *Of the
Contract of
Hiring.*

A hiring to serve five years as a sheerman, and to work sheerman's hours only, will not gain a settlement.

A hiring at four shillings per week, to work from six A. M. to seven P. M., with liberty to do as much over-work as he pleased, is an exceptive hiring.

the night time, and often went on errands for his master on Sundays, and never worked with anybody else during that time, nor thought himself at liberty so to do. Lord Kenyon, C. J. said, "that there was no real distinction between this case and *Rex v. Macclesfield*, (*ante*, 387,) for that the fair construction of this agreement was, that the pauper was to be his own master on Sundays, and on other days after he had served the thirteen hours, because he had only covenanted to serve those hours, and that the expression of one was the exclusion of the other. *It was essential in these cases that the servant should be under the power and coercion of the master during the whole time.*" (a)

Rex v. North Nibley, 5 T. R. 21, is a case similar in its material circumstances, and the court said that *Rex v. Kingswinford* had decided the question, and that such hiring and service did not gain a settlement.

Rex v. Buckland Denham, Burr. S. C. 694; 2 Bott, 311. The pauper, about seventeen years of age, was hired by his father to a clothier of Buckland Denham, to serve him as a sheerman for five years, and was *to work sheerman's hours only* (which are uncertain): it was understood that he should be at his own liberty at all other times. He served his master as a sheerman, according to the agreement, working the same hours as his master's other shearmen did. By the court: "*This is not a good hiring for a year; because there is an exception in it, that the pauper was to work sheerman's hours only and to be at his own liberty at all other times.* But if the contract be an absolute contract for a year, the not working on Sundays and holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement."

Rex v. Birmingham, 9 B. & C. 925; 4 Man. & R. 691. Order of removal of W. Steam, &c. from Birmingham to Atherstone confirmed. Case:—The pauper went to live with J. Owen a button caster of Birmingham. After he had been with him some time Owen hired him for a year at 4s. 6d. per week. Nothing was said about Sundays. It was part of the terms of the hiring that the pauper was to work from six in the morning to seven in the evening, and might make as much over-work as he choose. He received earnest when he was hired. He served his master under this contract for a year, during which he lived in his master's house and boarded himself; he lived there on Sundays as well as week days, and on Sunday morning he used to ask if any thing was to be done, and if there was, he did it. He made a good deal of money by over-work, but never did any for any one but the master, and was never paid for it but by him: he was allowed 2d. an hour for over-work. At the expiration of the first year, he was hired by Owen for a second year on the same terms, except that he was to have 5s. 6d. per week wages and 4d. an hour over-work. He served the whole of the second year. He was hired for and served a third year on similar terms. Bayley, J. "This case is very different from *Rex v. Byker* (*ante*, 374). There the court thought the term was only mentioned as the measure of the wages, and that the contract did not impose any limit upon what was reasonably required by the master; and that the relation of master and servant continued during the twenty-four hours. But in this case there was a stipulation that the pauper was to work from six in the morning till seven in the evening, and might make as much over-work as he choose. It was optional in him to do over-work or not. He had a right to say to his master, I have worked thirteen hours and will work no more. This is clearly an exception in the contract, limiting the control of the master to the specific period of time therein mentioned." Littledale and Parke, Js. concurred. Order confirmed.

Rex v. Frome Selwood, 1 Bar. & Adol. 207. John Bagnall and family were removed from Birmingham to Frome Selwood. Order confirmed. Case:—The pauper was hired by articles of agreement made the 16th day of August, 1820, by himself on the one part, and John Wright of Birmingham, bedstead maker, of the other part. It was agreed that, first, J. Bagnall doth undertake and agree with J. Wright by these presents, that he J. Bagnall, in con-

(a) In *Rex v. Wrenton*, Burr. S. C. always under the control of the master, 458, Foster, J. said "a hired servant is even on Sundays."

sideration of the wages hereinafter agreed to be paid to him by J. Wright, shall and will from the date hereof, for and during and unto the full end and term of three years from thence next ensuing and fully to be complete and ended, work for and serve the said J. Wright in the business and employment of a bedstead maker, and in such particular branches thereof as the said J. Wright shall from time to time think proper to employ him: and also that he the said J. Bagnall shall and will from time to time, during the continuance of the aforesaid term, to the best of his power and capacity, make, manufacture and complete such goods as shall from time to time be given or delivered to him, or which he shall be requested to make: and also that he the said J. Bagnall shall work from six o'clock in the morning to seven in the evening in summer, and from seven in the winter to eight o'clock, in every working day during the said term, and shall not nor will, during the said term, work for or serve any other person whomsoever. And the said J. Wright, in consideration of such work and service, doth hereby undertake and agree with the said J. Bagnall to find him full employment during the said term, and to pay him on Saturday night in every week for the first year 7s., the second year 8s., and the third 9s. The pauper stayed in Wright's service in Birmingham for a year under the above agreement. The question for the opinion of this court was, whether or not the pauper gained a settlement in Birmingham by the hiring and service above mentioned. *Bayley, J.* "The rule is that if a party contract generally to serve in a particular trade, though he may be bound to work only during the usual hours of work in that trade, yet by so working he will gain a settlement. But if it be made part of the bargain that the person hired shall serve for specific hours only, then the relation of master and servant does not subsist out of those hours, according to the maxim *expressio unius est exclusio alterius*, and that is an exceptive hiring. In *Rex v. Buckland Denham* (a) (*ante*, 388,) there was an express exception in the contract, the pauper was hired as a shearman to serve for five years to work shearman's hours only. The same observation applies to *Rex v. Kingswinford* (b) (*ante*, 387). The hiring there was for seven years to work for thirteen hours in the day (Sundays excepted). *Rex v. Birmingham* (c) (*ante*, 388), goes further than either of those cases. The pauper there was hired for a year to work from seven in the morning to seven in the evening, with liberty to make as much over-work as he pleased; and as it was optional in him to do over-work or not, and as he might refuse to work more than thirteen hours, the court held that there was an exception in the contract limiting the control of the master to the specific period of time therein mentioned. In the case of *Rex v. North Nibley* (5 T. R. 21, *ante*, 388), the terms of the hiring were the same as in the present case. They do not admit of the distinction contended for with regard to the difference between serving and working. There the pauper was hired as a colt shearman to work twelve hours each day, and that was held to be an exceptive hiring, upon the ground that the servant to gain a settlement must be under the control and coercion of the master the whole time of service. Now in this case, although the servant could not have worked for any other master out of the stipulated hours, he might have worked for himself, or at all events might have refused to execute during those hours any commands of his master in his business. This therefore was an exceptive hiring, and no settlement was gained by the service under it." *Littledale, J.* "I thought in *Rex v. St. John Devizes* (*post*, 392), and I think now, that if the case were *res integra*, an engagement to work thirteen hours in the day ought to gain a settlement, being all the work that could be reasonably exacted. But it appears to me that the authorities are conclusive in favour of the finding of the sessions." *Parke, J.* "I think this case is governed by the principle to be collected from *Rex v. Birmingham*. And it is to be observed, that the agreement is not simply for service but for service in a particular trade, so that the exception in the hours of working was an exception of the very thing which was the subject-matter of the contract of hiring." Order of sessions confirmed.

(a) *Burr. S. C.* 694. (b) 4 T. R. 219. (c) 9 B. & C. 925; 4 Man. & R. 691.

1. *Of the Contract of Hiring.*

Rex v. Norton Bavant, 4 Nev. & Man. 687. John White and family were removed from Norton Bavant to Frome Selwood. Order quashed. Case:—The pauper's birth settlement was in Frome Selwood. About eight years ago the pauper went to one Gutch in the parish of Corsley, to hire himself as a colt shearman; Gutch asked the pauper if he liked to work for him for a twelvemonth, and offered 4s. a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of the day on Saturday, so as to make up the ten hours a day. The pauper served the year and slept in the same parish, sometimes at his master's and sometimes at home. About a month after entering into the service, it was agreed between the master and the pauper that the latter should receive one penny *per* hour for over-hours; and he continued to receive the same to the end of the year. Sometimes he looked after his master's horse, and sometimes worked in the garden. At the end of the year the pauper agreed with the master to stay on upon the same terms, with the addition of 6d. a week more wages. The pauper served a second year, doing nearly the same work as before. The pauper during both years worked over-hours at his master's request, and never refused when he was wanted. He was sometimes employed on Sundays, and was paid for so doing. The pauper kept an account of his over-time by the direction of his master, and was asked by his master if he would sooner do the over-work in his own time or in his master's. The pauper choose to work his over-hours in the evening. The question for the court is, whether the pauper gained a settlement by hiring and service in Corslay. Lord Denman, C. J. "I think it impossible for us to say that we are bound by the decision of the sessions. The sessions have found that there was a birth settlement in the appellant parish, and a subsequent settlement by hiring and service in the respondent parish: *provided* this court is of opinion that the hiring which they have stated amounts to a hiring for a year. The court is therefore bound to inquire whether it is such a hiring or not. We should find it very difficult to reconcile all the cases which have been decided as to *exceptive hirings*. This case is however precisely governed by *Rex v. Birmingham* (*ante*, 388), for the facts are quite the same." Bayley, J. in that case distinguishes it from *Rex v. Byker* (*ante*, 374), which had been cited. Here the master asked the pauper if he liked to work for a twelvemonth, and offered 4s. a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of Saturday so as to make up the ten hours a day. There was a part of the week which the pauper was not bound to work for his master. That which took place after the original agreement forms no part of the contract. We are pressed with the authority of *Rex v. Ossett cum Gawthorpe*. In that case we did not intend to overrule *Rex v. Birmingham*, on the contrary, it is expressly mentioned and distinguished in the judgments. The distinction between the two cases is I admit a refined one, and one of our learned brothers (Taunton, J.) thought that we were wrong. There however the contract certainly was different from that upon which the question *here* turns. In that case there was a *general hiring* for five years stated, and then followed *certain arrangements* as to the amount of the wages. Here the actual contract of hiring itself is to work for ten hours a day only. Therefore without interfering with any of the decisions referred to, we may hold that this is an *exceptive hiring*." Littledale, J. "I am of the same opinion." Patteson, J. "I also am of the same opinion. I do not think that the sessions can be said to have found that this was a hiring for a whole year: for they have asked us to decide whether it is so or not. We distinguish between *Rex v. Birmingham* and *Rex v. Ossett cum Gawthorpe*. In the latter case I was not much pressed by *Rex v. Birmingham*, but was more so by *Rex v. Frome Selwood* (1 Bar. & Adol. 207). The question whether a contract of hiring is *exceptive* or not, depends upon whether over-work is *optional* or not on the part of the servant. In *Rex v. Ossett cum Gawthorpe* it was *not optional*. We all agreed there as to the principle though we differed as to the facts. Here the over-work is *optional*." Coleridge, J. "It is quite trifling to say that there has been any finding by the sessions which can prevent our going into the inquiry whether

this is an exceptive hiring or not. They leave the question entirely open to us. There is no doubt a difficulty in reconciling all the cases upon this subject; but at the same time there is no class of cases in settlement law on which the principle is better settled. The difficulty arises from the courts having upon the same facts and the same principles come to different conclusions. It would have been better if the sessions had found upon the settled principle, that the hiring was incomplete or complete for a year. The principle being settled it is possible for any one who reads this case, without referring to other decisions upon the subject, to doubt that this is an exceptive hiring. During all the time beyond the stipulated hours the pauper was his own master. He might have gone away and worked wherever he would. This was clearly an exceptive hiring. That which came after the original contract in this case, shows what was the understanding of the parties. A distinction was then acknowledged by them between master's time and servant's time." Order of sessions quashed.

Rex v. Ozelworth, Burr. S. C. 302; 2 Bott, 432. W. Hewett agreed with T. Palsor, clothworker, to serve him in his business for three years, at so much a week. He was to work twelve hours a day, and a penny for each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to Hewett if he performed the agreement, or if Palsor should discharge him before the end of the term. It was understood between them that Palsor might turn Hewett out of his service at any time during the term, paying him the sixpences detained. Hewett worked under the agreement for about six months; and then, being ill, absented himself about three months, and then returned, and was received by Palsor, and continued to work for him under the agreement till removed by the order, being about three-quarters of a year after his return. By the court: "Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides, the two justices removed him whilst he was actually in his master's service."

Rex v. St. Agnes, Burr. S. C. 671; 2 Bott, 310. The father of the pauper contracted with Mr. Nankivell (the pauper being then fifteen years of age) for the pauper to work at Nankivell's stamps, situate in St. Agnes, (which stamps are mills, wherein several are employed in cleansing and manufacturing tin,) for one year, at the yearly wages of 5*l.* The pauper served Nankivell at the stamps for the year, by working therein daily, except holidays and Sundays, according to the custom of tanners, and his father received his wages as he had occasion for it. During the year the pauper ate, drank, and lodged with his father in St. Agnes, serving Nankivell at his stamps, and in no other capacity, nor ever became a part of his master's family. By the court: "This was an entire contract for a year, without any exception contained in it; and the service was according to the custom of the country. The difference is where the exception is part of the contract, and where the contract is absolute: the question turns upon this distinction. In *Rex v. Macclesfield* (ante, 387), it was part of the original contract: here it is not so. And they were unanimous that the pauper gained a settlement."

Rex v. Horwick, 10 East, 489. The pauper was hired as a bleacher and crofter for a year at 12*s.* a week; nothing else passed at the time of hiring, and he served the year. The custom is for each bleacher to be directed by his master to get up a certain number of pieces a week, calculating at so many pieces a day for six days; there is no stint as to hours, and if the bleacher finish his work in less than the time appointed, the rest of the time is his own to do as he pleases. The pauper on Sundays went where he pleased, without asking his master's leave. The pauper occasionally made up for lost time by working on Sundays, but this was his own act. The master had nothing to do with the bleachers on Sundays. Lord Ellenborough, "The law of the land breaks in upon such contracts as these on the Sundays, and the master in this case had as much right to the service of the pauper for the whole year as the law will allow. Here is a clear distinction between this case and *Rex v. Macclesfield*, *Rex v. Kingswinford* (ante, 387), and *Rex v. N. Nibley* (ante, 388). Here is an express hiring for a year, and

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But if hiring is to serve three years, though only to work twelve hours a day, and if more to have a certain sum per hour, this gains a settlement.

So, also, where the exceptions are only implied, and not absolute.

Hiring to work as a bleacher and crofter.

Implied exceptions by the custom of the country will not defeat the settlement.

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A clerk in a merchant's house, hired by the year, but serving only during the usual hours of mercantile business, thereby gained a settlement, although these hours never occupied the whole day.

A hiring for four years, to work according to the rules of the factory, which were at the master's discretion. The pauper was told she was to work twelve hours a day: Held, not an exceptive hiring.

no express exception of any part of the year. But this is an attempt to introduce an implied exception from the practice of a particular house of manufacture; though *implied exceptions in the times of service, by the custom of the country, have been held not to break in upon general contracts of hiring for the year.*"

Rex v. All Saints, Worcester, 1 B. & Ald. 322. A clerk in a mercantile house was hired by the year, but he served only during the usual hours of business, which did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave, when those hours were over. He did what he pleased on Sundays. After hearing *Puller* in support of the order, Lord *Ellenborough*, C. J. said, "There is in every contract of hiring some implied exception of hours for relaxation, food, and rest; I cannot at least suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his services at any other hours than those mentioned: there is not any exception in the contract. The hiring then being general, and there being no exception but such as are necessarily implied in every contract, I think that the pauper by serving under it for a year, gained a settlement." *Bayley*, J. said, "The distinction between the two classes relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class; and therefore I think the pauper gained a settlement by this hiring and service." *Abbott* and *Holroyd*, Js. concurred. Order of sessions quashed.

Rex v. St. John, Devizes, 9 B. & C. 896; 4 Man. & R. 681. Order of removal of *Prudence Abrahams* from *Chippenham* to *Devizes* confirmed. Case:—The pauper hired herself by a written agreement, made with Mr. S.'s foreman, to work in Mr. S.'s factory as silk winder for four years. S. agreed to pay her 2s. a week for the first year, and a progressive increase in each successive year, subject to a reduction for absence through sickness or otherwise from her work. She agreed in all things *to observe and obey all the rules and regulations of Mr. S.*, as well with regard to the *hours of attendance and of work* as then made, and other particulars of working. She was to pay for unnecessary waste. At the expiration of the time, for good conduct, she was to receive a gratuity of 3*l*. When the pauper executed this agreement, the foreman told her that she must observe the working hours, and if certain work was not done, she must work twelve hours a day. The pauper entered on her service the day of the agreement. Rules for the factory had not at that time been reduced to writing. The foreman said they existed only in the breast of the master, but were known to and acted on by the work people. They were, during the service of the pauper, occasionally altered by the master, but the rules as to the hours were never changed. Time was at first allowed for tea, but afterwards revoked by the master's sole authority. The question was, whether this was an exceptive hiring, and whether parol evidence had been properly received. *Bayley*, J. "Where there is in a contract of hiring an express exception of any particular time, so that during that time the master cannot exercise any control over his servant, that is not a hiring for a year. By this agreement the servant stipulates to obey all the rules of the factory with regard to the hours of attendance. In every hiring the law will imply that the party hired shall work at all reasonable hours when required. The ordinary working hours in a manufactory are twelve hours a day; but it does not therefore follow that the master may not, on extraordinary occasions, require his servant to work at other hours. Whether he does so or not the relation of master and servant continues during the whole day. It does not appear what were the specific rules in this case; but assuming that one of them were to work twelve hours a day, yet, inasmuch as the regulations might be, and were, from time to time, altered by the master, the stipulation that the servant should obey the rules of the factory with regard to hours of work, did not give the servant any right to say that the master should not require her service at all reasonable hours. Such a stipulation does not necessarily imply that she is not to work beyond cer-

tain hours. The true meaning of this agreement is, that the relation of master and servant was to continue the whole day. There is no exception in the contract, and no remission of service, but such as the law will imply in every contract of hiring." *Littledale, J.* "To constitute a yearly hiring, the relation of master and servant must subsist during the whole year, and during the whole of every day. It has been held in several cases, that a hiring in terms for a year, the servant to work for so many hours a day, is an exceptive hiring. These cases have gone to a great extent. It seems to me, that unless by the terms of such a contract there is an express exception showing that the relation of master and servant is not to subsist during the whole year, or during the whole of every day in the year, it is a yearly hiring. By this contract the servant is to conform to the rules of the factory. That is a stipulation which the law would imply in every contract of hiring; and we cannot from that infer that there was an exception of any period of time during which the relation of master and servant was not to exist." *Parke, J.* "I have no doubt that any thing which passed by parol between the foreman and the pauper was not admissible evidence to explain the agreement. It is said there is an exception to the agreement by reason of that stipulation, whereby the pauper agrees to obey the rules of the factory. But that imports no more than a contract to obey the orders of her master, which is a term implied in every contract of hiring." Order of sessions quashed.

13. *Imperfect Apprenticeship not a good Hiring.(a)*13. *Imperfect Apprenticeship not a good Hiring.*

It must be a contract for service, and not an imperfect contract of apprenticeship. Those cases only are inserted here where the contract has been held to be a hiring. Those relating to imperfect apprenticeships are collected under that title.

Rex v. Little Bolton, 2 Bott, 222; Cald. 367. The pauper went to W. Stott, at Great Bolton, and asked him if he would teach him to weave counterpanes; Stott answered, he would teach him, if he would work with him two years and a half or three years, and the pauper's earnings were to be divided between them; the pauper was to find himself with meat, washing, and clothes; he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper worked with Stott under this agreement, in Great Bolton, about a year and a half, and then the pauper gave the master 20s. to be free, having then married. The master (whilst he was working under the agreement) found him looms, room, and materials; he never employed the pauper in any work but weaving; the condition upon which he taught the pauper to weave was one half of his earnings. Stott received the money, and paid the pauper one half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. Lord Mansfield, C. J. delivered the judgment of the court. "We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, (b) and not convertible into hirings and services, speak of the pauper as an apprentice, and that he was to serve as such. There is no such statement here; and we are therefore of opinion that it is a good hiring and service." Orders quashed.

If there be an agreement in writing to teach a trade, and the person is not spoken of as an apprentice, it is a hiring.

Rex v. Eccleston, 2 East, 298. Removal from Little Bolton to Eccleston confirmed. Case:—The pauper, when about fifteen years of age, went to Tonge with Haulgh, and made a verbal agreement with S. Clough, a weaver of counterpanes, to serve him a year and a half. Clough was to teach him to weave counterpanes, and the pauper was to have one half of what he earned, and to find himself in every thing. Nothing else passed between them on making the agreement. The pauper worked with Clough for a year and a half; except for a fortnight, during which he remained absent; but Clough however brought him back into his service, and obliged him to stay a

A binding by verbal agreement to serve another, on condition of being taught a trade, is a hiring for service.

(a) See division of the subject, *ante*, cases. See *Rex v. Laindon*, as cited by Lord Ellenborough in the next case.

(b) This has been overruled in several

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fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of his service he constantly slept at the house of his mother. Lord *Ellenborough*, C. J. "I gave a reluctant assent to *Rex v. Little Bolton* (*ante*, 393); but as the case now before us is in terms the same as is there decided, I think it is better to abide by that determination, than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled than to determine what it shall be. I am not, however, convinced by the reasoning of that case, and if the point were new, I should think otherwise. I should consider, as Lord *Kenyon* said, in *Rex v. Laindon*, that if the relation of master and apprentice be created by the contract of the parties, though they do not use the very words master and apprentice, yet, if they use words tantamount, it is sufficient. The word 'apprentice,' he observed, was taken from *apprendre*, to learn; and what was that but an apprenticeship, where the purpose of the contract was for one man to *teach* and the other to *learn* a trade. Then what was this intended to be? I should have said, upon general reasoning, that where the contract was that the master should teach the other a trade, and the latter was to do nothing *ulterior* the employment in that trade, it was a contract *apprendre* in the true sense of the word; and being defective in this case, for want of proper legal formalities, it could not enure as a contract of hiring in a servant. However, as Lord *Kenyon* did not think proper to over-rule *Rex v. Little Bolton* in terms, though he disapproved of what was there said; and as it was not overturned in *Rex v. Highnam*, or *Rex v. Rainham*, for the reason I at first gave, I think it better to concur in that decision, however unwilling I should have been to have done so in the first instance." Per *Lawrence*, J. "The case referred to is directly in point, and not having been over-ruled it ought to govern the present. *Rex v. Laindon* and *Rex v. Rainham* are both very distinguishable from the present."

If one be clubbed for three years, to be taught a trade, and contract to do any work he may be set about, it is a hiring. (a)

Rex v. Coltishall, 5 T. R. 193. At Lady-day, 1785, the pauper being about eighteen years of age, and a bricklayer's labourer, was clubbed with J. Rolfe, of Coltishall, for three years, at 6s. per week the first year, 7s. the second year, and 8s. the third year; to board, lodge, and wash for himself; he was to be taught the trade of a bricklayer. An agreement in writing was to be prepared for three years, but this was never done. The pauper served two years and upwards, and then, upon some difference, his master and he consented to part. No premium was paid. The pauper *was to do any work Rolfe set him about*, and was not to be absent from his business during any part of the time. Lord *Kenyon*, C. J., said, "that it was impossible to raise a doubt upon the case; for that the concluding part of it, which stated that 'the pauper was to do any work his master set him about (a) was decisive to show that he must be considered as a hired servant: and that, although one of his objects was to learn a trade, that was deemed equivalent to part of his wages.'"

Rex v. Martham, 1 East, 239. By an agreement made by the pauper's uncle, he was clubbed with B. a bricklayer, for three years, at certain weekly wages, to learn the trade of a bricklayer, *and to do any other work* his master might set him about, with a proviso, that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages. It was holden that the pauper gained a settlement, though occasional deductions on those accounts were made. The case was decided upon *Rex v. Coltishall*.

Rex v. Shinfield, 14 East, 541. M. Lanesbury was removed from Reading to Shinfield. Order confirmed. Case:—The pauper's husband, R. Lanesbury, in June, 1806, hired himself for a year to J. Palmer, brickmaker, and continued from that time upwards of a year in Palmer's service. On 29th September, 1806, the pauper's husband (being still a minor) and Palmer,

The pauper entered into a written contract (unstamped and without seals) to serve for three years, to learn to make bricks: Held to be a hiring in the relation of master and servant (b).

(a) This is not decisive. *Rex v. Coombe*; *Rex v. Tipton*.

(b) This case also stated, that "clubbing signifies a person contracting to

serve for the purpose of learning a trade, and to have less wages on account of learning the trade."

signed an agreement on unstamped paper, and not under seals, under which the pauper's husband served the whole three years. The agreement was: "I, R. L., do hereby covenant and agree to serve J. P. for three years to learn to make bricks, and the art of burning, on condition of the said J. P.'s finding me sufficient victuals, lodging, and clothes, and to be clothed in the habit of a working man at the expiration of the three years on condition of my helping to attend the kiln on nights: 29th September, 1806.—(Signed) R. L." and attested. In the margin of the paper, near the attestation, was written, "I, J. P., consenting to the above agreement." The appellants produced R. Lanesbury's mother, who swore that Palmer came to her and asked her if she had any objection to her son being apprenticed to him, and she said, "No." The case having been argued, Lord Ellenborough, C. J. "This was the case of a person who, though a minor, had power to contract for a hiring and service to another, or as an apprentice, (*Drury v. Drury*, cited in 3 *Term. Rep.* 161.) *Quicumque viâ datâ*, the pauper gained a settlement in Shinfield; for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by the law; and if invalid and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid and not operating as an apprenticeship, but as a hiring in the relation of master and servant, what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade of his master, instead of seeking for a compensation for his service upon a *quantum meruit*. It is therefore unnecessary to determine whether or not this was a good contract of hiring and service, as created by the written instrument. And all the cases cited by the appellant's counsel differ from the present, because in none of them was there a good contract of hiring and service, independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect, however, to *Rex v. Little Bolton* (*ante*, 393), the court, in *Rex v. Eccleston* (*ante*, 393), considered it as a subsisting authority, whatever question there might have been upon the subject at first, and I think the convenience of the thing is in support of it, but it is not necessary now to discuss that point." Grose, J. "Here there was originally a good contract of hiring and service, and that was not done away with by the subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service." Le Blanc, J. "This case is distinguishable from all the former cases in which the question has been, whether the contract was to serve as an apprentice, or as a hired servant; where if the court considered that the contract was to serve as an apprentice it could not enure to give a settlement, as in the case of an hired servant, for in none of those cases was there any valid contract of hiring and service existing before, independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parol, as a hired servant for a year, and pending that contract he and his master entered into a written agreement, by which it is contended that the parties meant to contract for an apprenticeship, and that this, though invalid for the purpose of creating an apprenticeship, yet changed the nature of the service under the former hiring into a service as an apprentice, and therefore prevented the gaining of a settlement as a hired servant. But I do not accede to that argument; because, if there were at one time a subsisting valid contract of hiring and service for a year, and pending that the parties enter into an invalid agreement, I do not see how that can do away the former valid contract. But even upon the construction of the written instrument itself, I do not think that it is to be taken as a contract of apprenticeship. In all the former cases where the instrument in question has been so construed, it has been stated that the parties intended to contract in the relation of master and apprentice, only they had contracted informally in order to avoid the stamp duties. But here the contract is for Lanesbury

1. *Of the Contract of Hiring.*

to serve Palmer for three years, to learn the art of a brickmaker, on condition of Palmer's finding him in board, lodging, and clothes; there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said that no wages are reserved, but that is no more than what often happens with boys at service; they get less at first, because they must first learn their business before they can be of use to their masters in it. Then though it is stated here that the boy was to serve his master to learn his business, that would not prevent it from operating as a contract of hiring and service. I do not think, therefore, that this was, in the terms of it, an agreement for an apprenticeship, so as to supersede the former contract of hiring and service. But even if it were intended as an apprenticeship, yet the instrument being invalid, would not supersede the former valid contract." *Bayley, J.* "I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year between the parties as master and servant generally, and after three months' service generally under it, they entered into a new agreement, by which the boy was to serve his master for three years, not generally, but to learn to make bricks and the art of burning, upon condition of being found in board, lodging, and clothes. The meaning of the parties, therefore, was, that the general service before contracted for should be restrained to such service as would enable the boy to learn his master's business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy, and there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from the terms of it, being at least equivocal, we are warranted by the cases in saying that the object of it was merely to confine the general service, before contracted for, to such parts of the master's employ as would enable the boy to learn his business. If this, therefore, was to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages." Orders confirmed.

A verbal agreement by the father that his son should work with another for two years, to have what he earned, and to allow the master two shillings per week for instruction, and the use of a frame and standing: Held to be a contract of hiring and service, and not of apprenticeship. (a)

Rex v. Burbach, 1 M. & Sel. 370. Removal of Mary, the wife of W. Timson, from Burbach to St. Mary, Birmingham. Order quashed. Case:—The father of the pauper's husband made a verbal agreement with R. Palmer, of Burbach, frame-work-knitter, that his son should be with Palmer, and work with him for two years, and have what he got, and that he should allow two shillings per week out of his gains to Palmer: viz. one shilling for teaching him the business of a frame-work-knitter, ninepence for the rent of a frame, and three-pence for the standing of the frame. Nothing was said about his being an apprentice. The pauper's husband served Palmer for two years at Burbach, and had what he earned after the two shillings per week were deducted, who found a frame and all materials, but the pauper's husband paid for the needles himself; and in regular work he earned about ten shillings per week. The pauper's husband had no right to work for any body else in Palmer's frame, nor did he do so to Palmer's knowledge; he received no wages, and boarded and slept all the time at his father's house, where his washing was done; he did no act as a servant for Palmer by his order; and on Sundays he was at his father's house. Lord *Ellenborough*, C. J. "The case was fully argued on both sides. The ground of argument taken is, that the father was the contracting party, and could not bind the son. It certainly cannot be contended that the son would at all events be bound by the contract of the father; but in every case, if a contract be made by a person standing in a peculiar relation to another, on his behalf and for his benefit, and that other performs his part of the contract, there is no authority which should restrain me from leaving to the jury whether he did not adopt the contract. It seems absurd to say that if a party contract on

(a) In *Rex v. Newton* (post), J. Pat- This observation relates only to the ques-
tison said, "I consider this case to be tion of apprenticeship, and not to the
overruled by *Rex v. Crediton*" (post). validity of the contract by the son.

my behalf that I should do work, and I do it, that the rule of *omnis rati habitio* does not apply. Every jury upon such a question would find a previous *mandatum* evidenced by the service afterwards. Here the son is acting as servant; but if it were doubtful, the sessions have drawn the conclusion, and have not submitted to us any question whether he was bound by the contract. The question then is, whether this is a contract of hiring and service, or of apprenticeship. It certainly cannot be called an apprenticeship, nor does it bear any of its forms; for although there is mention of an allowance to be made by the son on account of the master's teaching him the business, yet that is not peculiar to the contract of apprenticeship: it enters into the contemplation of almost every contract of hiring and service, how far the servant has learnt his art, or stands in need of farther instruction; and according to his proficiency a consideration is made in the rate of wages. It is the measure to which each party resorts in apportioning the compensation; and if the circumstance of the servant's having to learn his art is to make a difference, it would change the nature of most contracts of hiring and service, even in the meanest situations, into that of an apprenticeship. As to *Rex v. Little Bolton* (*ante*, 393), without saying whether one quite approves the principle of that case, it is enough to say that the court has been so much in the habit of acting upon that decision, that it would now be dangerous to set it aside. I do not say that if that case were erroneous, and only destitute of legal foundation, it would not be right to set it aside; but if it stands on plausible grounds, it ought not to be canvassed too nicely. This case is stronger than *Rex v. Little Bolton*; there the master agreed to teach the pauper if he would work with him two years and a half or three years; so that the teaching was of the very essence of the contract. Here there is no express contract by the master to teach, (a) only an allowance by the servant out of the earnings for teaching, which perhaps may amount to an implied one. I will not say that an action might not be maintained upon this contract for not teaching, although upon a demurrer to a declaration framed upon it, there might be difficulty. Admitting, however, that such a contract may be inferred, it is by no means so clear as assumed in argument: and even if it were, it would not be so strong as *Rex v. Little Bolton*, which was an express contract. There Lord Mansfield observed upon the agreement not speaking of the pauper as an apprentice; and here there is no mention of apprenticeship, except as far as learning and teaching are ingredients in the contract of apprenticeship, which they are also in almost every contract of hiring and service regularly entered into. Therefore, without saying that *Rex v. Little Bolton* is not law, we cannot hold that this is not a good hiring and service." *Le Blanc, J.* "With the exception of name, this case and *Rex v. Little Bolton* are the same." The other judges concurred. Order of sessions confirmed.

II. THE SERVICE UNDER THE CONTRACT; (b)—AND HEREIN,

II. The Service
under the
Contract.

1. Of Connecting Services under distinct Hirings.
2. Of Lapse between Connected Services.
3. Of Dispensation.
4. Of Change of Master in the same Service.
5. Of Dissolution.

1. Of Connecting Services under distinct Hirings.

1. Of connecting
Services, &c.

The 8 & 9 W. & M. c. 30, s. 4, enacts, "that no person so hired shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year." (See statute, *ante*, 329.)

(a) If there is a contract to learn, one to teach will be implied. *Rex v. Crediton* (*post*). (b) See the division of the subject, *ante*, 311.

2. *The Service under the Contract.*

In order to perfect a settlement by hiring and service, it is therefore necessary that the person *continue and abide in the same service during the space of one whole year.* (*Ante*, 329.)

But it is obvious that a person may abide in the *same service* under different successive hirings, and the law does not require that the hiring and the service shall be for one and the same year, to entitle the party to a settlement.

It is said that in *Dunsford v Redgwich*, *Fol.* 133; 2 *Bott*, 364; the court declared that there ought to be one entire contract, and one entire service for a year, pursuant to that contract. But it is proper to remark, that the point in question in that case was, whether a hiring for two half years should be deemed a sufficient hiring, and not what should be a sufficient *service* under such hiring.

Rex v. Overton, *Burr. S. C.* 549; 2 *Bott*, 366. The pauper Bailey was settled in Overton, and on the 25th day of March contracted with Orpwood, of the parish of Steventon, for the wages of 20s., to serve him from the said 25th day of March, 1697, until Michaelmas then next following, and which time she served accordingly. At Michaelmas, Orpwood contracted with her from the said Michaelmas for one year ensuing, for the wages of 30s., and she remained with him until some time in the month of April, 1698, in which month, by mutual consent, she left her service, and he paid her the proportion of her wages that were then due. The sessions conceived that the pauper, by continuing more than one whole year under this hiring, gained a settlement in the parish of Steventon; and the Court of King's Bench were of the same opinion, for the service under the hiring for half a year, and the half year's service under the hiring for the year, answers the end of the statute 8 & 9 W. III. c. 30, and is a good service for the year.

The same point precisely was determined in *Rex v. South Molton*, *Raymond*, 426; a case the records of which cannot be found, but which, Sir James Burrows says, may possibly be the same case as *Rex v. Overton*. (See *Burr. S. C.* 550.)

Brightwell v. Westhallam, 1 *Sess. Ca.* 87; *Fol.* 143; 2 *Bott*, 251. There was a hiring and service from three weeks after Michaelmas to Michaelmas, and then a hiring for a year, and service for eleven months. The Chief Justice said, "if there were a service for a year, under a hiring from week to week, and then a hiring for a year, *and serving for forty days*, (a) he should adjudge that a settlement. The reason is, because by the 3 W. & M. c. 11, a hiring for a year, and forty days' service under it, made a settlement; in regard that the hiring for a year showed that the person was not likely to become chargeable, for that he was able to work; but by 8 & 9 W. III. c. 30, the service must be during the space of one whole year. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by forty days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes."

Rex v. Aynhoe, 2 *Sess. Ca.* 119; *Fol.* 144; 2 *Bott*, 253. The pauper was hired from Christmas to Michaelmas, and served till Michaelmas; then was hired for a year, and served till Midsummer. And this was adjudged a settlement. *Rex v. Overton*, and *Brightwell v. Westhallam*, were cited.—Lord *Raymond*, C. J., said, "The case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was antecedent to the hiring for a year." The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the pre-

A service for a year, though under different hirings, is good, if one of the hirings be for a year.

A hiring and service from three weeks after Michaelmas to Michaelmas, and then a hiring for a year, and service for eleven months after second hiring, is a good year's service.

A hiring and service from Christmas to Michaelmas, and then a hiring for a year, and a service till Midsummer under the second hiring, will suffice.

(a) But in *Rex v. Adson* (*post*), it was held that forty days' service under such yearly hiring was not necessary to gain a settlement.

cedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion."

Rex v. Underbarrow and Bradley-Field, Burr. S. C. 545; 2 Bott, 259. A. Kellet hired herself at Christmas to J. Thompson, till Whitsuntide, which time she served. At Whitsuntide she hired herself to Thompson for one year, and continued in the service till the beginning of March, when she and her master parted by consent. It was urged, that the two cases of *South Bolton* and *Rex v. Overton* were determined upon facts prior to the explanatory statute of the 8 & 9 W. III., before which statute a hiring for a year, and a service for forty days, gained a settlement. And it was observed that in *Rex v. Aynhoe*, Lord Raymond and Mr. J. Page declared that if it had been then *res integra*, they should have judged it to be no settlement: and now it appears to be so; as the two supposed precedents were no precedents at all, being prior to 8 & 9 W. III. By the court: "The authority of these cases will be just the same, whether the facts were prior to the statute or not; because the court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the court were unanimously of opinion that, for the sake of certainty, it was best to adhere to settled determinations. Though there might be room for great doubt upon this point, if the matter were again open, yet the rule *stare decisis* is always proper, and especially in these cases of settlements." (a)

Rex v. Adson, 5 T. R. 98 The pauper was hired eight days after Old Michaelmas, 1786, to Old Michaelmas following, and continued in his master's service till the day after Old Michaelmas-day, 1787, when he was hired by his master till the Michaelmas following, and under that hiring he served only ten days. The sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served forty days subsequent to that hiring. This case was argued in Michaelmas term last, when only Lord Kenyon, C. J., and Grose, J., were present. Lord Kenyon was of opinion that a settlement was gained by the hiring and services stated in the case: but Grose, J., being of a different opinion, it stood over for further consideration; and now Lord Kenyon said, "That they were both of opinion that the pauper gained a settlement."

Rex v. Underbarrow and Bradley-Field, Doug. 309. Hallhead was hired for a year, from Whitsuntide, 1770, to Whitsuntide, 1771, to Burrow, for the yearly wages of 18s. She lived with him till the 12th of May, being Old May-day, 1771; her master then removing to a new farm in Strickland Roger, carried her with him, where she served seven days, which completed her year, and received her wages. Then she hired herself to the same master for another year, from Whitsuntide, 1771, to Whitsuntide, 1772, for the wages of 25s.; and she continued with him in Strickland Roger from Whitsuntide, 1771, till Candlemas, when by mutual consent she quitted her service, and received her wages up to that time. Lord Mansfield, C. J. "We are all very clear that this was a continuance of the same service with an increase of wages."

Rex v. Sutton, 1 East, 656. The pauper hired himself by the week to Mr. Hatch, of Sutton. Nothing was said about Sunday in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages, though he sometimes received some victuals. He received his wages every Saturday night or Sunday morning: he did not reside in his master's house, but boarded himself. At the end of nine months, on his master's family servant going away, the pauper was hired in his place for a year, at 12*l.* per annum, and served eleven months under that hiring. Lord Kenyon, C. J. "It has now been too long settled to be recalled, that if there be a hiring for a year, and a service for a year, though but a small part of the service were performed under the yearly hiring, a

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So, will a hiring and service from Christmas to Whitsuntide, and then a hiring for a year, and service till the beginning of the March after the Christmas.

So a hiring and service for less than a year, and then a hiring for a year, but only ten days' service under the yearly hiring, will gain a settlement.

A hiring and service for a year, at certain wages, and then a hiring for another year at higher wages, and service for part of the latter year, is a continuance of the same service; and the settlement is in the parish where the service concluded.

Services similar and dissimilar, may be connected.

(a) Upon searching the records, it has appeared that the case of *Rex v. Overton* was after the 8 & 9 W. III., and the mistake arose from the errors of the several reporters of that case as to the particular times of her hiring and service.

2. *The Service under the Contract.*

settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services *ejusdem generis*, as it has been said, can be joined. The term got into fashion some time ago. At that period Mr. J. Foster thought that settlements were too easily acquired by the construction which the court was inclined to put on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured for a certain time, as a reward for his labour: a strange idea, if examined; because somewhere or other he must at any rate be maintained, if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week; nothing was said about Sunday; it is very seldom that there is: why then is that day to be excluded? If a servant be hired for a year, nobody doubts but that Sundays are included; then why not included in a weekly hiring, if no exception be made? The sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to show it was otherwise intended. The pauper was paid sometimes on the Saturday, sometimes on the Sunday; and whenever the master ordered him to do any work on the Sunday, he did it: what is to be concluded from thence, but that it was his duty to do so? How do these facts show that he was not under the master's control on the Sundays as well as other days of the week? In *Rex v. Wrington* (*infra*) it appeared from the circumstances that Sundays were excluded. But it is said, that the services cannot be joined, because they were not *ejusdem generis*. I really know not what that means, nor where the line is to be drawn. Suppose a postillion were made coachman, would those be deemed services *ejusdem generis*? It is said, that he at first was an out-door servant, and then a family-servant; but I do not know what difference that made in his services. Upon the whole, I cannot do better than what the justices below have done; they have determined that there was a continuing service for a year, and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion."

Service for a year, partly under a weekly and partly under a yearly hiring, gives a settlement.

Rex v. Ragworth, *Cald.* 179; *Bott*, 378. S. Ward was, by an order of two justices, removed from Bagworth to Ratby. Order quashed. Case:—Nine weeks before Old Michaelmas, 1780, the pauper was hired by W. Hunt, of Ratby, by the week, and served him till Old Michaelmas, when she was hired for a year from that time, and served till about a fortnight before the following Old Michaelmas, when being with child, she and her master parted by consent, and she received her wages up to that time. That she was employed in the same manner during the time she served by the week, as under the hiring after Michaelmas. *Willes*, J. "The question raised upon the merits is perfectly clear; the pauper did not live in this family occasionally, or work merely as a day-labourer or char-woman, but constantly as a menial servant, and employed throughout in the same services; and a hiring for a year, with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance,) gives a settlement." *Buller*, J. "Here is a continuance in the service for a year: and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year; the extent and duration of the several preceding services, 'where such services have been similar,' have never been adjudged to vary the law, but there must be one entire hiring for a year."

Exception to the rule in the above cases. (a)

Rex v. Wrington, *Burr.* S. C. 280; 2 *Bott*, 270. Ann Stokes, the pauper, when thirteen years of age, went to Chew Magna, to her aunt; and

(a) The distinction between this and the two preceding cases seems to be, that in this the service was as an artizan, and the Sundays were excluded; see Lord Kenyon's judgment in *Rex v. Sut-*

ton (*ante*, 399); whereas in the two former cases the paupers were menial or domestic servants, and there was no exemption from service on Sundays.

soon afterwards went to Windford, and worked with Nicholas Walker, cloth-worker, in the business of burling clothes, by a weekly hiring. She continued to work with Walker for a year and a half. On the last Saturday of the service the pauper covenanted to serve Walker for a year, at 1*l.* 10*s.* wages; entered immediately into the service, and continued therein eleven months. By the court: "The pauper did not acquire a settlement by this service. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service, which was not performed under a hiring for a year, provided it be a continuance of the same service, yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: the former was as a day labourer, or weekly labourer at the most; not as a hired servant, who is part of the master's family. (a)

Rex v. Dawlish, 1 B. & Ald. 280. Order of removal from Clyst Honiton to Dawlish confirmed. Case:—The pauper, by indenture, dated September 3, 1804, was bound apprentice by the parish of Broadhembury to R. Percy of that place, till she should attain the age of twenty-one: whilst under this indenture she served J. Blackmore, with Percy's consent, for two years in Dawlish; after which, in May, 1812, she hired herself as a yearly servant to Mrs. Bryant of Clyst Honiton, for 4*l.* a year. In the September following the indentures expired. At the end of her year the pauper again hired for another year to Mrs. Bryant, and served ten months under this last hiring. There was no interruption between the two services. The first year's service with Mrs. Bryant was without the knowledge of Percy. After argument, Lord Ellenborough, C. J., said, "If these were *res integra* there might be some difficulty in admitting the principle, that a service without a contract might be coupled with service under one, so as to gain a settlement; but that having been decided, this case ranges itself under the same class." Abbott, J. said, "The first contract was either valid or void; if valid, then there is a good hiring and a good service; if void, then the first year's service will be a service under no contract at all, which, according to the argument, it is admitted may be coupled with the service under the second hiring. In either case a settlement is gained."

Rex v. Harbury, 1 Bar. & Adol. 360. Gardner was removed from Harbury to Snitterfield. Order quashed. Case:—The pauper was hired on the 20th of September, 1823, to serve Mr. Richard Smith, of Snitterfield, for fifty-one weeks. The pauper went into Mr. Smith's service on the 18th of October, 1823, and served Mr. Smith for fifty-one weeks. On the 8th of September, 1824, Mr. Smith again hired the pauper for a year, to commence from the Old Michaelmas ensuing. The pauper remained in Mr. Smith's house, and worked for him regularly from the 18th of October, 1823, until about three weeks before Old Michaelmas, 1825. He served under the said yearly hiring till about three weeks before the Old Michaelmas, when the contract was dissolved. The case merely stated these facts, no point was submitted for the opinion of the court. Bayley, J. "There was no express hiring for the 10th of October, but there was a continuation of the service, not as it appears objected to by the master; *Rex v. Dawlish* (*supra*) applies." Littledale, J. "The words of the case are sufficiently strong. We cannot understand from them that the pauper worked as a servant on all the other days, but not on the 10th. Parke, J. "The sessions have in substance found a continued service from October 18, 1823, till the dissolution in 1825. I think their conclusion upon the facts as found by them is wrong." Order of sessions quashed.

Rex v. St. Mary Kedwelly, 2 B. & C. 750; 4 D. & R. 309; 2 D. & R. Mag. Ca. 291. This case is stated at length under the title of *Imperfect Apprenticeships*, *post*. The court were of opinion that the first contract created the relation of master and scholar, and it was contended that service under that contract would connect with service under a hiring as a servant. *Rex v. Dawlish* was quoted, and Bayley, J. said, "There a year's service was

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Service under a void hiring (as where the pauper was an apprentice), will connect. There was a year's service after the indentures had expired.

But the whole year's service must be under contracts creating the relation of master and servant.

(a) See preceding note.

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A hiring for a year, and a service continued beyond the year for six months, without a new agreement, gains a settlement in the place where the service was performed for the last forty days.

A settlement can be gained by hiring and service only in that parish where the party has the character of a servant hired for a year.

performed after the expiration of the indenture;" and in giving judgment, he said, "to gain a settlement by hiring and service, the service must be under a contract creating the relation of master and servant. Here the first contract created the relation of teacher and scholar, and the service under it not being under a contract of hiring, cannot be coupled with the subsequent service. *Littledale, J.* "The service must be for a year under a contract or contracts, creating the relation of master and servant.

Rex v. Croscombe, 2 *Stra.* 1240; *Burr. S. C.* 256. Joseph Garnsey was removed from Croscombe to St. Cuthbert's. Order quashed. Case:—The pauper hired himself for a year to Dr. Lucy, and lived a year with him in St. Andrew's, and had his wages and livery; and, without coming to any new agreement, continued with him a quarter of a year longer. Then he removed with his master to St. Cuthbert's, where he continued to live with him about six months, still under the same contract. It was urged, that this was not the same service, for that the first contract was completed and determined. It had gained the servant a settlement in St. Andrew's by serving a whole year there. To which it was replied, that it is the constant practice for servants to go on upon the first agreement without any new one. And if this were not the case, then a servant who had lived with his master twenty years in different parishes without any new contract, must be settled in the parish where his master had lived in the first year of his service. And by the whole court: "As there was a hiring for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where the service was performed the last forty days."

Rex v. Apethorpe, 2 *B. & C.* 892; 4 *D. & R.* 487. The pauper was hired, about six years ago, to Mr. Gilby, of Brigstock, for a year, to commence at Old Michaelmas, the whole of which service he performed at Brigstock, sleeping in that parish. Before the end of the year Gilby hired the pauper from the following Old Michaelmas to the New Michaelmas. There was no interruption of the service; and under the second hiring the pauper served his master about half a year in Brigstock, and then removed with him to Sudborough, where he finished his service under such hiring. *Per Bayley, J.* "If the pauper gained any settlement in Sudborough, it would follow, that wherever there was once a hiring for a year, and the pauper afterwards continued with the master as a weekly servant for twenty years, and resided in twenty different parishes, he would be settled in the parish where he resided for the last forty days, although at that time he were not hired for a year. It appears to me that *Rex v. Croscombe* (*supra*) does not bear upon the present case. There the pauper hired himself to live with Dr. Lucy as his servant for a year, for 4*l.* and a livery; he did accordingly live with his master during that year, and without coming to any new agreement, continued with his master in the same parish about a quarter of a year longer. The master then removed to another parish, and the pauper continued to live with him about six months in the latter parish upon the terms of the first contract, and was paid wages at the same rate. Now in that case, at the expiration of the first year, a new hiring for a year was fairly to be presumed, from the circumstance of the pauper continuing in the same service without any alteration of the terms; and if the service in the last year was to be considered as a service under a renewed yearly hiring, that case does not at all bear upon the present. That such was the ground upon which the court proceeded in that case, appears from what was said by *Willes, J.*, in delivering the judgment in *Rex v. St. Giles, Reading*, *Cald.* 56; (*post*, 407), '*Rex v. Croscombe* (*supra*) does not apply, because the court presumed the continuance of the old contract.' There being no authority therefore bearing upon the subject, we must look to 3 & 4 *W. & M. c.* 11, s. 7: 'if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement *therein*.' The word *therein* refers to the parish or town into which the party has been hired for one year. The settlement, therefore, attaches to him in that parish where he has the character of a servant hired for a year. The 8 & 9 *W. III. c.* 30, recites,

'that doubts had arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year;' and enacts, 'that no such person *hired as aforesaid*, (i. e. lawfully hired into the parish for one year,) shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.' The latter statute, therefore, requires, that in order to gain a settlement by the hiring and service mentioned in the former statute, (which was a hiring into a parish for a year,) the party should continue in the same service for the space of one whole year. The former statute requires that the contract should be for a year, and that the service should be under the contract of hiring there mentioned. The latter statute requires besides, that in order to gain a settlement the service should continue for a year. I am therefore of opinion, that a settlement can be gained by hiring and service in that parish only where the party has the character of a servant hired for a year; and that being so, the pauper did not gain a settlement in Sudborough. *Holroyd, J.* "In *Rex v. Croscombe, Lee, C. J.* certainly gave an extra-judicial opinion, that the service in the second year need not be under any contract of hiring, provided it was a continuance of the same service; but when the state of the law, as it existed between the 3 & 4 W. & M. c. 11, and 8 & 9 W. III. c. 30, comes to be considered, I think it perfectly clear that that opinion cannot be supported. By 13 & 14 Car. II. c. 12, overseers were authorized to remove a pauper to a parish which was his last place of settlement for forty days, either as householder, &c., or as a servant. At that time, therefore, a service for forty days conferred a settlement. The 3 & 4 W. & M. c. 11, s. 3, enacts, that the forty days' continuance of any person in a parish or town, which then conferred a settlement, should be accounted from the publication of a notice in writing which he should deliver to the churchwarden or overseer of the poor, and the latter was to cause it to be read publicly in church. Sect. 6 provided that any person exercising an annual office in the parish during the year should gain a settlement, without having delivered such notice in writing; and sect. 7 enacted, that if any unmarried person, not having any child or children, should be lawfully hired into any parish or town for one year, such service should be adjudged and deemed a good settlement therein, although no notice in writing were delivered and published. Now the words *such service* must refer to a service under the contract of hiring mentioned in a former part of the clause; and if that be so, this statute clearly required that the service should be under a contract of yearly hiring. The legislature in this statute seems to have considered the exercising of an annual office in the parish during the year, and the being hired into the parish for a year, as equivalent to the notice to the parish which was required by the former section. Inasmuch, however, as the exercising of the parochial office was not sufficient to give a settlement, unless it were exercised during the year, doubts were entertained whether the service under the contract of hiring should not also continue during a year. If the service for the year were not required by that statute, the contract of hiring for the year is the only circumstance from which the parish could be deemed to have had notice; and if so, it was essential that the contract should be made in the parish. But doubts being entertained whether service for a year was required, statute 8 & 9 W. III. c. 30, was passed. Sect. 4 recites, that doubts had arisen touching the settlement of persons unmarried, not having any child or children, lawfully *hired* into a parish or town for one year; and then enacts, that no such person *so hired as aforesaid* shall be deemed to have a good settlement in such parish or township, unless such person shall continue in the service during the space of one whole year. The latter statute did not intend to dispense with any thing required by the former, but to add another qualification to those already required to confer a settlement. The service spoken of in the latter statute is the same service that was contemplated by stat. 3 & 4 W. & M. c. 11, viz. a service under a contract of hiring for a year. I think, therefore, that in order to give a

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If a part of the year's service is abroad, still if the pauper serves forty days in a parish in this country he will gain a settlement.

settlement in any parish, some part of the service must be under a contract of yearly hiring.

Rex v. Buckingham, 3 Nev. & M. 72; 5 Bar. & Adol. 953. T. Burnell and family were removed from Maidsmorton to Buckingham. Order confirmed. Case:—The birth settlement of the pauper, Thomas Burnell, was in Buckingham. On the 28th of February, 1828, he was hired by H. Smithson, Esq. of Maidsmorton, for a year, as a footman and groom, at the wages of 7*l.* and a suit of livery. On the following day he went into the service and continued until the 9th of May following. Mr. Smithson being a West India planter, was about to visit his property in Berbice, and on the 9th of May came to an agreement with the pauper, whereby the latter engaged to bind himself to serve Mr. S. in Berbice as overseer and clerk on his plantations, for the term of three years from the first day of his arrival in Berbice, at the salary for the first year of 15*l.*; for the second, 20*l.*; for the third, 30*l.* current money in Berbice; and Mr. S. promised to pay the above money as it became due (the first-named doing his duty), and to find him his board and lodging and doctor's charges, as is usual for overseers in Berbice. On the preceding day (May 8th) Mr. Smithson paid the pauper 1*l.* 16*s.* 9*d.*, the amount of three months' wages. The pauper continued with Mr. Smithson at Maidsmorton till the 12th of May, and the same day went with him to London, where they continued until the 20th, when they embarked for Berbice. The pauper acted in the capacity of servant to Mr. Smithson during his stay in England after he quitted Maidsmorton, and during the voyage. They arrived at Berbice on the 10th of August following. A few weeks after landing they remained at a friend's house, and the pauper lived with Mr. S. as servant, and they then proceeded to Mr. Smithson's plantation at Berbice. The pauper then entered into the office of overseer and clerk, and acted also as servant about the person of his master and lived in his master's house. This continued until February following (1829), when Mr. Smithson having declared his intention of returning to England, the pauper expressed his desire to return also. Mr. Smithson at first objected, but ultimately consented, and the pauper did accordingly accompany his master to England, acting in the capacity of his servant as on the outward voyage. They landed in London on the 10th of May, 1829, and the pauper continued there until the 14th, when they returned to Mr. Smithson's residence at Maidsmorton, and the pauper continued to act as his servant in the house until the 1st of June without any thing passing as to hiring or terms of service. Three or four days before the 1st of June Mr. Smithson told the pauper he meant to give him 20*l.* as his salary up to that time, of which he then gave him 10*l.*, and promised him the remainder whenever he should want it. On the 1st of June the pauper was married, and the same day, previous to the marriage taking place, Mr. Smithson and the pauper came to an agreement for the pauper's service as weekly servant at 4*s.* a week, to live and board in the house as before. Pauper continued in such service until the September following, and then left and received the remaining 10*l.*, his weekly wages having been regularly paid. The pauper was never absent from Mr. Smithson's service a day from its commencement in February, 1828, to its determination in September, 1829. The whole amount of wages received by the pauper for his service to Smithson was the sums of 1*l.* 16*s.* 9*d.*, 20*l.*, and the weekly wages. The question was whether the pauper gained a settlement in Maidsmorton. *Denman, C. J.* "The argument is that the legal effect of the second agreement was to put an end to the first; I think not; and if not, then there were forty days' residence in Maidsmorton under the yearly hiring, and the pauper gained a settlement. The pauper's agreement of the 9th of May amounts only to an undertaking by him that when he should go out to Berbice he would bind himself to serve as clerk and overseer for three years from the day of his arrival there. It does not appear that he ever did so bind himself; and though it is stated that soon after his arrival at Berbice he entered upon the office of overseer and clerk, yet he continued to act as servant about the person of his master and lived in his master's house. The contract contemplated by the second agreement never came into operation." *Little-*

dale, J. concurred. *Taunton, J.* "It is said that the first contract was vacated by the second, and *Rex v. Great Chilton*, (5 T. R. 672,) has been relied upon. Much as I respect the authority of Lord *Kenyon*, I should have concurred with the opinion of the majority of the judges in that case. There the pauper having been hired for a year from Martinmas, agreed with his master to serve him for a year from the ensuing May day at weekly wages, the court held properly that the two contracts were inconsistent, and that the latter put an end to the first. The latter contract there was not executory but absolute, from a given day. But here the two contracts are not inconsistent; the pauper engages to bind himself to serve, he does not enter into an actual contract to serve, and it does not appear that any further contract was ever made between the parties: it is not immaterial that during the whole period of service he continued to act in his original character of servant. There is no decision to show that where the service is clearly referable to a yearly hiring, that the master's going abroad, and the service afterwards being in a foreign country, destroys the settlement of the servant." *Patteson, J.* "The sessions have found that the pauper continued to act as servant about the person of his master, and that he continued to do so till he came home. That could not be under the second contract, but must have been under the first." Order of sessions quashed.

Rex v. Farleigh Wallop, 1 Bar. & Adol. 336. *J. Bullpett* and wife were removed from Basingstoke to Farleigh Wallop. Order confirmed. Case:—In the first week of January, 1824, the pauper was hired by Mr. Faithful, in the parish of Farleigh Wallop, to serve as under carter from that time till the following Michaelmas at 3s. 6d. per week and 1l. at Michaelmas for wages. The pauper served till Michaelmas, 1824, when Faithful again hired him till the following Michaelmas if he had no sale, at 3s. 6d. per week and 3l. at Michaelmas for wages; if he should have a sale the pauper was to go. The pauper served till February, 1825, when Faithful had a sale, and the pauper went away from his service, having received 1l. 10s. from Faithful for wages. It was contended on the part of the appellants that the latter hiring was not a hiring for a year, for it was liable to be defeated by a contingency within the year, which contingency happened within that period. The sessions, however, held that it was a sufficient yearly hiring to allow of the service under it being connected with the previous service, and that therefore a settlement was gained in the appellant parish. *Bayley, J.* "I am of opinion that there was in this case a sufficient hiring and service to confer a settlement. The statute 3 W. & M. c. 11. s. 7, enacts, 'that if any unmarried person not having child or children shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement.' The subsequent statute, 8 & 9 Will. III. c. 30, s. 4, requires that the person so hired shall continue and abide in the same service for the space of one whole year. The question in this case is whether the pauper was lawfully hired for a year within the meaning of the former statute? In order to form a judgment whether there was a hiring for a year, we must look to what took place at the time of the hiring. The sessions find that at Michaelmas, 1824, Faithful hired the pauper till the following Michaelmas if he should have no sale, at 3s. 6d. per week and 3l. at Michaelmas for wages; if he should have a sale the pauper was to go. There was liberty, therefore, reserved to the master to put an end to the contract of hiring within the year; but until he exercised that liberty the hiring was for a year. The pauper was under an obligation to serve for a year, provided the master required his service for that period, and did not do any thing to determine the contract. A hiring may be for a year, absolutely or conditionally; in either case it is a hiring for a year. Here the pauper served more than eight months before Michaelmas, 1824; then that which I consider a hiring for one year, within the statute 3 W. & M. c. 11, s. 7, took place, and there was a service for four months under the yearly hiring. It is quite clear that service for the whole year under the yearly hiring is not necessary to confer a settlement. Here the pauper served more than a year under two hirings, and one of them was for a year. If he had left the service of his master

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A pauper was hired to serve as carter from Michaelmas to Michaelmas if the master had no sale, and if he should have a sale the pauper was to go: in a few months the master had a sale and the pauper left: Held, that the hiring was a good contract for a year, and the pauper having served the master a year, and part of that time under such yearly hiring, gained a settlement.

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after he had served under the two hirings for a year, but before any sale had been determined on, he would have been settled in the parish where he resided the last forty days before he quitted the service. In that case it would have been wholly immaterial whether there had been any sale or not: a settlement once gained cannot be defeated by a subsequent event. There having been a service for a year, and the service in part having been under a yearly hiring, I am of opinion that a settlement was gained." *Parke, J.* "I am of the same opinion. The case depends on the statutes 4 W. & M. c. 11, s. 7, and the 8 & 9 W. & M. c. 30, s. 4. The first of these statutes requires a hiring for a year, and the second a service for a year, but the whole service need not be under the yearly hiring. The sessions have found that there was a hiring from Michaelmas, 1824, to Michaelmas, 1825, determinable in a given event, viz., in case the master should have a sale. That was a hiring for a year, defeasible within the year by matter subsequent, and such a contract is a good hiring for a year within the meaning of the statute. There was altogether more than a year's service, and part of that service was under the yearly hiring. No case has been cited to show that a settlement once obtained can be defeated *ab initio* by matter subsequent, and there is no reason for our so holding, looking either at the words of the act of parliament or decided cases, for the pauper has been lawfully hired into the parish within the words of the 3 W. & M. c. 11, s. 7; and having been so hired, has continued and abided in the same service so as to satisfy the words of the statute 8 & 9 W. III. c. 30, s. 4. I cannot distinguish this from a case where the contract being originally for a year has been dissolved within the year by mutual consent. In that case a settlement would be gained, provided there has been in the whole a year's service." Order of sessions confirmed.

Rex v. Fillongley, 1 B. & Ald. 319. W. Downes was removed from Coleshill to Fillongley. Order confirmed. Case:—The pauper, previous to Old Michaelmas, 1812, was hired by W. Hollick, of Ansley, from the then next Old Michaelmas, for a year, at 7*l.* 10*s.* wages. At the same time Hollick said to the pauper that he did not know the custom of the parish as to hiring for a year or fifty-one weeks; that he would inquire, but he believed it must be for a year, and hired him for a year. The pauper entered into the service in pursuance of this contract; three or four days after which Hollick (having previously to the pauper coming into his service ascertained that the practice of the parish was to hire for fifty-one weeks), asked the pauper whether he would consent to the hiring being for fifty-one weeks, to which the pauper consented. He continued in Hollick's service until a week before Old Michaelmas in the next year, when Hollick paid him the 7*l.* 10*s.* for his wages, and asked him to stay on till Old Michaelmas, which he agreed to do on being paid for it; he staid till Old Michaelmas, and received 1*s.* 6*d.* for that time. After argument, Lord *Ellenborough*, C. J. "If the statutes are to be strained in any respect, it seems to me that the mind revolts much more from coupling a previous service with a subsequent hiring for a year, than from the conclusion to be drawn in the present case. I think this case, therefore, within the limits of the former decisions. If it were now for the first time under our consideration, I should be disposed to pronounce a different judgment: but the decisions are so numerous upon the subject, and we should overturn so many settlements if we were to overrule them, that I feel myself bound by their authority to hold this to be a good hiring and service." *Bayley, J.* "I am of the same opinion, upon the ground of the authorities alone. There is in this case a hiring for a year, and a service for a year, and that according to the decisions will be sufficient to confer a settlement." *Abbott* and *Holroyd*, Js. concurred. Order of sessions quashed.

Rex v. Caverswall, *Burr. S. C.* 461; 2 *Bott*, 372. S. Brassington, the pauper, was hired for a year to E. Brassington, at Trentham, and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was with his own consent discharged from his service, and received all his wages, except what was deducted for the three weeks. As soon as he left his service he went to London, and was

A service under a hiring for fifty-one weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement.

absent about a fortnight. Upon his return, at Mrs. B.'s request (his master being then from home), he went again into the service; and within a week after the expiration of the first year his master hired him again for another year, and he served him in Trentham for about six months of that second year, and then left him. By the court: "Here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year, and consequently no settlement was gained at Trentham."

Rex v. Alton, 2 Bott, 317. The pauper, R. Johnston, hired himself to his uncle, D. Johnston, a turner, for a year. The pauper was to be found in board, pocket-money, and clothes, by his uncle, for whom he was to work in his trade of a turner; after he had served six months, his master finding him idle, they came to a new agreement, by which the pauper was to work in the trade by the piece, and to be paid by the piece for what he should earn, and he to find himself in board and clothes; on which last terms he served to the end of the year, sometimes working by the piece when he boarded out, and at other times he served his master in the house, and then he was boarded by his master. The sessions held that this new agreement determined the contract, and that the pauper gained no settlement. The court: "It is not necessary that all the service should be under a hiring for a year; a service under a hiring for less than a year may be coupled with service under a hiring for a year, and give a settlement; there are many cases to that purpose: there can be no doubt but the original agreement still continued, and besides, the second hiring being general, would be equivalent to a hiring for a year." Order quashed.

Rex v. St. Giles's, Reading, Cald. 54; 2 Bott, 261. Daniel Davies, the pauper, went into the service of Mr. Wilder, who kept an inn in Reading, on 19th December, 1763, under a general hiring as post-boy, and continued in that service for seven months, when he married his present wife. After his marriage he continued in his service four months, when he took lodgings in St. Giles's, and removed thither with his wife, where he slept for seven months, continuing to serve his master the whole time without coming to any new hiring, making eighteen months in the whole, and then left his service. Willes, J. delivered the judgment. "This case depends upon the construction of the 7th sect. of 3 Will. III. c. 11. The act was intended for the benefit of unmarried persons, and the principle of it is, that the parish that reaped the benefit of the labour of a man unincumbered with a family, ought to make a provision for that man when not able to provide for himself; but not for others from whom they derived no benefit: the 8 & 9 Will. III. c. 3, s. 30, used the very same words as the former statute, 'unmarried person not having child or children.' The meaning of these acts is obvious, that the labour of one man shall not be sufficient to incumber a parish with the maintenance of a numerous family. It has been determined (*Rex v. Hedsor* and *Rex v. Hanbury*), that marriage does not dissolve the contract, if it happen during the year in which a man has been hired as a single man; to such only the benefit of the act was meant to be extended, and for this reason married persons ought to continue in the settlement acquired before marriage. If there had been a residence of forty days in St. Giles's, at the end of the first year the pauper would have been well settled there; it would have been within *Rex v. Hedsor*; but that is not the present case. *Rex v. Croscombe* (ante, 402), does not apply: 1. Because that was the case of a servant unmarried during the whole of the year. 2. Because the court did there presume the continuance of the old contract. Here the pauper was incapable of making a new contract at the commencement of the second year; presumption can go no further; at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made, a service under that could not have given the pauper a settlement. Shall he then by an implied contract do that which in express and direct terms he could not do? If the original hiring were constructively to be continued throughout the second year, it might last for twenty years; and

2. The Service under the Contract.

Hiring for a year, and agreeing in the middle of the year to work by the piece.

If a servant marry during the first service, he cannot gain a settlement under a subsequent hiring for a year.

2. *The Service under the Contract.*

parishes might be burdened with families, from whose labour they had received no benefit.

2. *Of Lapse between connected Services.*

If the hiring be from November to Michaelmas, and the servant continue in the service till the second day after Michaelmas without any new agreement, and on that day there be a new agreement for a year from that day, the two services may be coupled by the means of the service upon the intervening day.

2. *Of Lapse between Connected Services. (a)*

Rex v. Sulgrave, 1 T. R. 778. The pauper was hired to J. Welch of Wormleighton, November, 1785, till Michaelmas next, at 6*l.* 10*s.* wages. Two or three days before Michaelmas-day, his master offered him the like sum for the year ensuing, which he did not think sufficient. On Michaelmas-day his master offered him seven guineas, and they agreed to all but the expense of washing. The pauper had no intention of leaving his master, and he believed his master had no intention of parting with him; he continued in his master's house and did his work as usual, but without any obligation; he lodged at his master's house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on that day, but the next day but one, being the second day after Michaelmas, he agreed to accept seven guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the Michaelmas following, but at the expiration of the year, from the day on which he agreed to accept the seven guineas. He continued in the service till Whitsuntide. *Ashhurst, J.* "I think this was a good service in Wormleighton, according to the authority of all the cases cited. All that the statutes require is, that there should be a hiring for a year, and a *continuance in the same service for a year*. Now it is stated, that the pauper had no intention of leaving his master, and that he did all his master's work as usual; and though he thought himself at liberty to leave his master's service on the Michaelmas-day, and when he agreed with his master the second day after Michaelmas, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year. If so, the only question is, whether there were any discontinuance? It appears from the case there was not; for the servant continued in the same capacity, he did his work as usual, and if he had continued to serve for half a year, without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that time. This is like *Rex v. Croscombe* (*ante*, 402); in which case the servant was as much at liberty to quit his master's service after the first year, as the pauper in this case was on the Michaelmas-day, and it might as well have been said that in that case there was not a continuance of the same service, but there the pauper gained a settlement in St. Cuthbert's. *Rex v. Fifehead* (*infra*), and *Wichford v. Bretford*, do not apply; for one was determined on the ground of there being no fraction of a day; and in the other, there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one, so as to give the pauper a settlement."

Rex v. Fifehead Magdalen, Burr. S. C. 116; 2 Bott, 371. W. Trim hired himself to a master at West Stower, from Midsummer to Lady-day, for 40*s.* At Lady-day he received his wages of 40*s.* and left his master's service, and then went to his father's house in West Stower; and in about an hour returned to his master, and agreed with him for a year, at 3*l.* 10*s.* a-year, and lived with his master half-a-year. When he went from his master's house, he had no clothes but what he wore, except a shirt, which he left at his master's house. Lord C. J. Lee said, "He remembered the resolution was first come into in Lord C. J. Parker's time, that a hiring for a year, and a service for a year, were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir Thomas Powys (who was just come into the court) very much boggled at it: but now,"

An hour's interval between the termination of the first service and the beginning of the second, does not amount to a discontinuance, although the servant leave the place for that hour.

(a) See division of the subject, *ante*, 331.

he added "the rule is established, that if there be a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year."

Rex v. Ellisfield, Cald. 4; 2 Bott, 375. The pauper, Samuel Bulpit, was hired on the 6th of December, 1773, to J. Dalman of Ellisfield, to serve till Michaelmas, 1774; he went into the service the next day, and continued therein till nine o'clock on Michaelmas-day, when he received his wages, and took his clothes, and left his master's house and service: about an hour afterwards, his master came to him and desired him to stay, but the pauper asked more wages than the master was willing to give, but said he would see him presently at Basingstoke fair, held that day for the hiring of servants. At the fair at one o'clock he made an agreement with his master to serve him till Michaelmas following, and went into his service that evening, and continued therein for three months: the pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house, and should have hired himself to any person who would have given him the wages he asked his master. By Lord Mansfield, C. J. and the court: "There is not the difference of an *iota* between this case and that of *Fifehead* (*ante*, 408), and every argument used there would apply in the present. It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time; he might have hired himself with any other master during his absence: upon his return he does agree to continue the *old* service, but makes a *new contract* for more wages: there was, therefore, a complete abandonment and discontinuance. The ground on which the court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple, J.* observed very properly in the *Fifehead* case, that upon every new contract there is a *sort* of discontinuance, and if this were otherwise the law of connecting two hirings within the year, which was now settled, could not be supported, where the first period was suffered to elapse before the second contract was made.

Rex v. Grendon Underwood, 2 Bott, 264; Cald. 359. On Friday before Michaelmas, the pauper hired himself for a year from that Michaelmas, to J. H. to be his carter; he had 11s. earnest, was to have 6*l.* wages, and to go into his master's service the Wednesday after Michaelmas day. On that day he came to his master's, who told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay; the pauper refused; his master told him he might keep his earnest and go about his business; the pauper said, "Am I at liberty to hire myself to any other person?" his master answered in the affirmative. The pauper then went away. In the same afternoon the master met him again, and hired him to serve the place of milkman and go to plough; gave him 2*s.* 6*d.* earnest, and agreed to give him 6*l.* 6*s.* wages, to serve him from that time till Michaelmas. The pauper immediately entered into the service, and continued till February; his master then hired him to serve the place of carter from that time to Michaelmas, gave him earnest, and agreed to give him 10*s.* 6*d.* additional wages; and the pauper continued till Michaelmas. Lord Mansfield, C. J. "In this case it is expressly stated, that on the Friday before Michaelmas-day the pauper was hired for a year from Michaelmas. It is then expressly stated, that they stood in the relation of master and servant from Michaelmas to Michaelmas. If so, it would be repugnant to say that this was not a hiring for a year. The case itself contradicts the idea that it was a hiring from the Wednesday after Michaelmas. Then the absence was matter of indulgence on the part

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So whatever the interval provided it be *part only* of a day.

Service under a hiring for a year, and a minor hiring, the servant quitting between them.

There may be an interval between the two services, if one end and the other begin *on the same day*, and the discontinuance will not prevent a settlement; even though the servant quit during that interval.

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of the master; and whether revocable or not, is so common in these transactions, and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract: but under all these circumstances I consider it as an indulgence which the master might revoke; and that it was a hiring and service for a year without any interruption on account of the short disagreement." *Buller, J.* said, "That in this as in all other contracts, all the words must have effect given them if possible. The case expressly stated a hiring for a year, and if the conduct of the servant in not coming into his service till the Wednesday, were considered as an act of right, founded upon an exception in the original contract, the contract would be overturned: whereas by construing it as a license or dispensation, effect is given to the whole. If then after the hiring for a year, which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service."

3. *Of Dispensation.*

3. *Of Dispensation. (a)*

The servant must abide in the same service, if not actually, at least constructively. A constructive service takes place where *the relation of master and servant continues*, but the master *foregoes* the benefit of actual service. This is called a *dispensation*. It is difficult, if not impossible, to reconcile two cases on this subject. In *Rex v. King's Pyon* (4 East, 410, post, 437,) Lord *Ellenborough* said, "I should not wish to carry the idea of dispensation further than it has been already carried; which in many of the cases seems to me to be stretched as far as ingenuity could go, upon the false idea that a servant has a right to acquire in gaining a settlement;" and in *Rex v. Sudbrooke* (4 East, 356; post, 426.) *Le Blanc, J.* lamented that the words of the statute had been departed from.

Absentee beyond the time of leave, if his master receives him again, is no interruption.

Rex v. Islip, 1 Stra. 423. A person hired for a year, during the year's service obtained his master's leave to go and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected that his staying to see his mother without leave was a desertion of the service, and the time he stayed away took so much off from a complete service for a year. But by the court: "This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service. It was then objected, that the servant for six days was sick and incapable of any service, and therefore could not gain a settlement, which is to be acquired only by a service for a year. (As to this, see *Rex v. Sharrington*, post, 413.) By the court: "A servant that lies thus under the visitation of God, which befalls him not through *his own default*, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom. The next point was, that the servant three or four days before his service expired, desired leave of his master to go to a fair to hire himself into another service. His master refused, and told him, 'I am resolved you shall gain no settlement in the parish; if you go it shall be for good and all.' The pauper said 'No, I will serve out the year.' The servant went notwithstanding; and did not return until the time of his service was expired. By the court: "This is nevertheless a settlement. The master refuses a reasonable request, coupling it with a declaration that a servant should gain no settlement, which is a badge of *fraud* on the part of the master, which ought not to prevail. The declaration of the servant that he would serve out the year, and his refusal to allow 6d. for the three days, show that the contract was not dissolved before the end of the year, and the law will not suffer a master to show himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires: if he doth, the service in point of law continues, and he gains a settlement notwithstanding. At the end of the year the master deducted for the time that the servant was sick, and for the time he went to his mother,

A servant while ill is still under the service of his master.

A servant who absents himself for a reasonable cause at the end of his service, and against his master's leave, may nevertheless gain a settlement.

(a) See division of the subject, ante, 331.

and the servant allowed the deductions. The master also abated for the three last days, but the servant refused to allow it: the master however refusing to pay, the servant took the rest of his wages."

Rex v. Polesworth, 2 Bar. & Adol. 483. Two justices removed J. Barwell from Kingsbury to Polesworth. Order confirmed. Case:—The pauper was hired by Mr. Hay of Polesworth, at Polesworth statutes, a fortnight before Michaelmas, 1799, as waggoner's lad, at 3*l.* 10*s.* wages for a year, commencing from the day after Fazeley fair, the Tuesday after Michaelmas-day. The pauper remained in the service till a fortnight before Michaelmas in the following year, when he went to Middleton statutes, having previously asked his master's leave and been refused. The following day the pauper asked his master what work he was to do; the master told him he might go where he had been the day before, and that he would not employ him any more. The pauper asked the master to pay his wages, and said if he did he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master's house on the day the summons was served; two days afterwards, the pauper called at his master's house; and the same day they both went to Polesworth statutes, when the pauper hired himself to a new master from the day after the next Fazeley fair. On the day after Polesworth statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate then directed the master to pay the pauper his whole wages: which the pauper took and was satisfied. The day after Fazeley fair, he entered upon his new master's service. The case having been argued, *Abbott, C. J.* said, "it seems to me, that the sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than, according to *Rex v. Islip* (*ante*, 410), he had a right to do. There was, therefore, no justifiable ground for dismissal. Then is there any mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service: the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said that he was satisfied; but he neither contracted nor offered to contract any other service. I think there is nothing in this case to show that if on the following day the master had ordered the pauper to return into his service, he would not have been bound so to do." *Bayley, J.* said, "The circumstance of the servant not having offered to contract with another master, naturally distinguished this case from *Rex v. Pyon* and *Rex v. Leigh*. As to the servant saying he was satisfied, that is easily explained; for his whole wages being paid, he was satisfied that the remainder of his service should be dispensed with." *Holroyd, J.* relied on the absence of any contract inconsistent with his return to the master. Order of sessions confirmed.

Rex v. Hanbury, Burr. S. C. 322; 2 Bott, 419. The pauper was hired for a year at Michaelmas, but did not come to his service till three days after Michaelmas, and served till the day after Michaelmas in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6*s.* 6*d.* of his wages for the time he was absent. The court said he gained a settlement by this service. This court has not been so strict in determining upon the service, as upon the hiring. It has often been held, that though a servant has been absent for a time, yet his master taking him again, purges his absence. And there is no difference between an absence in the beginning and in the middle of the service; for he is a servant from the time of hiring. (*Rex v. Grendon Underwood*, *ante*, 409.)

Rex v. East Shefford, 4 T. R. 804. The pauper was hired by Birch for a year, at four guineas' wages; he went accordingly to his service, and continued there eight weeks, when he ran away and was absent thirteen weeks,

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A pauper summoned his master for wages. He offered to continue in the service, but the master refused; full wages were paid, and pauper said he was satisfied: he made no contract for the time remaining: Held, a dispensation.

If a servant does not come into the service till three days after his contract, and is absent at different times without consent, but his master receives him again, it is a dispensation.

If a servant run away from his master and continue absent

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thirteen weeks, and then his master apprehend him, and give him leave to come back, deducting a sum for the time of absence, it is a dispensation.

during which time he worked with and received wages from another person. Birch then apprehended him by a warrant; but in his way to a justice asked him whether he would come back to his place or go to prison? and if he would come back, and go on in his place as he ought to do, he might. The pauper said he would come back; and his master asked him then what he should be willing to abate for the time he had been absent? The pauper said he thought 1s. a week would not hurt him, which was agreed to; and the pauper returned into his service and continued till the end of his year, when he received all his wages, except the 13s. which had been agreed to be deducted. Lord Kenyon, C. J. "If the old contract were dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, whether the service after the pauper's return were performed under the old or a new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: but as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them; though, if the question were now to arise for the first time, perhaps we should make a different determination. It has been decided that absence at the beginning, the middle, or the end of the year may be dispensed with, either with the consent of the master or for an excusable cause. In *Rex v. Hanbury* an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably, if the first case after the statute had arisen upon an absence of thirteen weeks, the court would have started at the question; but the court have gone on step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say that this pauper gained a settlement; for on his return he was received again into his master's service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master's object in apprehending him by a warrant was to compel him to complete the service under the old contract." Buller and Grose, Js. were of the same opinion.

If a servant, at her master's instance, go from his family on account of illness, to the hospital, and her mistress give her the remainder of her wages, it is a dispensation, although she never return.

Rex v. Christchurch, Burr. S. C. 494; 2 Bott, 436; 1 Nol. P. L. 406. E. Maxey was on the 24th day of August, 1757, hired into Christchurch for a year, and served till the 7th of August, when she was frightened into fits and incapable of doing any service. Her master being disturbed by her fits, desired Mr. Limonier, who lived in Bethnall Green, to take her into his house, that she might be under the care of her sister who lived there; but if Mr. L. refused to receive her, she was then to return to her master's house. Mr. L. took her in; and she resided there about five days, and then was taken into the hospital. The day after she had been received into Mr. L.'s house she returned to her master's to fetch away her clothes, and her mistress paid her two shillings, which made up the full year's wages. No words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service; but believed that had she recovered her health, her master would have received her again into his service. *She continued under the indisposition till after the year from the time of hiring was expired, and never returned again into her master's service, who, on the 17th of August, 1758, hired another servant in her place.* Lord Mansfield, C. J. "This is certainly a fair *bonâ fide* service for a year, without any fraud on either side. If a master gives his servant leave to go upon any other service, or to be absent for a short time, and pay him his whole wages, this is a good service. If the servant be taken ill by the visitation of God, it is a condition incident to humanity and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service; (a) and cannot deduct wages in proportion to the continuance of the servant's

(a) But see title "*Casual Poor*," (ante, 88 to 100.)

sickness. And there is no difference, whether the accident of sickness happen in the middle or at the end of the year. It is equally the act of God and without any fault of the servant. And in the present case, the servant's being at Mr. Limonier's or in the hospital, is just the same thing as her being kept in the master's house under his own roof."

Rex v. Sharrington, 2 Bott, 322; 4 Doug. 11. The pauper hired himself before Michaelmas, 1782, for a year to Mr. Hardy, brewer at Letheringsett, to drive a team and do whatever he was bid. After having lived with his master seven weeks, as he was driving the beer waggon, being in liquor, he fell off the shafts and broke his thigh. He was carried to the Norwich Hospital, where he continued twenty-nine weeks. On quitting the hospital he returned to Hardy, who refused to receive him, offering to pay him for the seven weeks, and to make him a present, which the pauper refused. He then went to Sharrington and continued fourteen weeks, and then by an order of justices on the 30th of September, 1783, he was sent to Hardy, who then also refused to receive him. The pauper continued in Letheringsett at a public house. He did no work for Hardy after he came out of the hospital, being incapable of work. The court were of opinion that a settlement was gained by this service at Letheringsett. Counsel did not appear on the other side, and the court said, "it was sufficient, as the pauper tendered his services to his master after his recovery."

Rex v. Maddington, Burr. S. C. 675; 2 Bott, 312. The pauper, being hired for a year from Michaelmas, continued in his service till about three weeks before the next Michaelmas, when having been kicked by one of his master's horses he went home to his friends about five miles off, without his master's knowledge or asking his leave, to cure his leg; and continued there during the remainder of the year, and never returned to his master, except for wages, some short time after Michaelmas; when he was paid the whole except 6s., which the master deducted on account of the said absence, which the pauper consented to. The court held, "that the servant gained a settlement, and they thought it to be within the reason of the determination of the *Islip case*. There was a reasonable cause of absence, and the master ought not to have deducted any part of his wages."

Rex v. St. Bartholomew, Cornhill, Cald. 48; 2 Bott, 445. The pauper U. Owen was hired for a year on the 11th of June 1771: in April her master told all his servants that he was going to live at Manchester, but did not know the time; and that they might look out for services, or stay with him until he went, as they chose; the pauper continued with her master in St. B. till the 4th of June, when he paid her the whole year's wages and half a guinea over, and that same day he left London. His going that day was quite a casual matter, and if he had remained in London he would have continued the pauper in his service. The pauper went into a new service two days after her master left London. Lord Mansfield, C. J. "The only question is, whether the servant continued *boná fide* in her service during the whole year? To be sure there is a distinction between exceptions from the contract originally, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *boná fide*, it can make no difference when the servant is engaged or where; or whether the service be in the same or another occupation; she quitted her service at the desire of her master, and received half a guinea beyond her wages as an equivalent no doubt for her board. It was accidental, and a favour to her master. *Rex v. Richmond* is full as strong as this, for there a new servant came into the very place. Fraud vitiates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country, and had no other settlement, shall she lose her only one which she deserves so well?" Willes, Ashhurst, and Buller, Js. concurred.

Rex v. St. Andrew's, Holborn, 2 T. R. 627. M. Robinson was hired for

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A pauper in liquor met with an accident, which disabled him for twenty-nine weeks. His master always refused to receive him back or employ him: Held, a dispensation.(a)

Absence at the end of the service on account of illness, is no dissolution, although the master deduct a sum from the wages on that account.

The master removed to another town, before the servant's year ended, and paid her the whole year's wages, and something over, and the servant two days after entered another service: Held, a dispensation.

The master became bankrupt,

(a) *Rex v. Coningsby*, post, Parke, J. recognized the doctrine of dispensation where the absence was occasioned by the misconduct of the servant; and *Taunton*, J. said, "he yielded to authority rather than reason."

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and the mistress discharged the servant, paying the whole year's wages: Held, a dispensation.

If a mistress on account of some difference discharge a servant, and pay her her full wages, which the servant accepts, it is a dispensation.

Where the master died three weeks after hiring the pauper for a year, the latter abiding in the service with the widow and sons to the end of the year, gains a settlement in the parish where she served; and it is no less an abiding in the service for a year, because one of the sons, on a frivolous pretence, turned her out of doors three weeks before the end of the year, she offering to stay to the end of the year, but carrying away her clothes the next day, and taking what the son insisted was her full wages for the year, according to the agreement, though she demanded a larger sum.

a year, and was continued in her service until within four or five days of the end of the year; when her master becoming bankrupt, and the messengers taking possession of the house, her mistress discharged her, paying her the whole year's wages. This case was not argued, the court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement.

Rex v. St. Philip, in *Birmingham*, 2 T. R. 624. The pauper was hired for a year to E. Poole, in Powick, where she served until within eight days of the end of the term, when on account of some difference between them she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her and paid her the full wages, which she accepted and quitted the service, and left the parish eight days before the year ended; but she said she would have served the year if her mistress would have let her. *Ashhurst, J.* "Though it be true that an agreement to put an end to the service will defeat the settlement, yet if it be not voluntary between the parties, as if a master, with a view to prevent a settlement, fraudulently turn her away or wrongfully discharge her, this will not defeat the settlement. Now this was I think a wrongful act of the mistress, which was submitted to but not agreed to by the servant. Something should have been stated to show that it was voluntary on her part; but it may be inferred she did not go by her own consent, but rather in consequence of the wrongful dismissal of the mistress, for she was desirous of serving the whole year." *Buller, J.* "thought this one of the clearest cases of dispensation. The warning given by the servant, and the payment of the whole year's wages by the mistress, showed a consciousness in each that they could not dissolve the contract before the end of the year." *Grose, J.* "It is clear if the servant be turned away by the wrongful act of the master, it will not prevent the settlement. Now here it is either the wrongful act of the mistress or it is a dispensation from service. *Rex v. Gresham* is distinguishable; this is more like *Rex v. Richmond*."

Rex v. Hardhorn with Newton, 12 East, 51. M. Lingard was removed from Newton with Seales to Hardhorn with Newton. Order confirmed. Case:—The pauper was hired by R. Gratrie in Hardhorn for a year. Three weeks after the beginning of the year the pauper's master died, and the farm was continued by his widow and two sons George and William. About three weeks before the end of the year, the pauper fell out with George about her work, because she threw more sand upon the floor than he deemed necessary, and was by him turned out of doors, though she was willing to stay. The next day she came again for her clothes, when George paid her 4*l.* 10*s.* as for her full wages. There was a dispute about the amount of her wages, George insisting that the pauper was hired for 4*l.* 10*s.*, and she demanding 5*l.* 15*s.* The pauper, however, accepted 4*l.* 10*s.* and never got any thing more, though she employed an attorney for that purpose. The pauper, when she came the next day for her clothes, offered to stay to the end of the year, but George would not let her. After argument, Lord *Ellenborough, C. J.* said, "There must be an abiding in the service for a whole year, in order to confer a settlement; as far as lay in the pauper there was such; but she was wrongfully and forcibly turned out of doors by her master against her will, and when she returned the next day for her clothes he gave her 4*l.* 10*s.*, which he said was the whole of her wages; but she did not assent to that, but demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She, therefore, did all she could to abide in the service, according to her contract, and did so, except so far as she was prevented by an act of force. And he distinguished between this and *Rex v. Grantham*. The servant having there been improperly turned out of doors by his master, in the first instance, took him at his word, and refused to return to his service, though invited by his master so to do; and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay." *Grose, J.*

"There is no consent by the servant, and as the servant tendered herself to perform the service, that was equivalent to the performance of it in law." *Le Blanc*, J. agreed and said, "Where the dissolution has not been assented to by both parties, the court has inquired into the cause of the dismissal. The pauper did not here, as in *Rex v. Leigh*, hire herself into another service before the end of the year, which was there held to be a dissolution of the contract." He added, "her taking her clothes and what money he was willing to pay, does not show her consent to abandon the contract, which she offered to fulfil to the end of the year." *Bayley*, J. agreed.

Rex v. St. Mary, Lambeth, 8 T. R. 236. The pauper, on the 15th of January, 1797, hired herself to J. Serle, for a year, from the 18th of that month, at seven guineas wages. She went into his service on the 18th, and remained until the 11th of January in the next year, when an information having been laid against her master for keeping a gaming house, he quitted his house, and told his servants (and the pauper amongst them) that he had no longer any occasion for their services, and then paid the pauper her whole year's wages. He would have kept the pauper, but on account of his being obliged to quit his house, and the pauper was unwilling to leave his service. She then went to her sister, and did not engage herself in any other service until after the year expired, though from the time that her wages were paid she considered herself at liberty to go where she pleased. *Lord Kenyon*, C. J. "If this point were not encumbered with decisions, and we were to resort to the very words of the act of parliament on which the question arises, I should perhaps yield to the argument of the counsel in support of the rule. Or if the cases cited by them proved the point for which they were cited, I should be strongly inclined to adopt them on this occasion. But it has been frequently said here, that it is of great importance that decided cases should be adhered to; and on this subject in particular I applaud the rule *stare decisis*. The cases cited by the counsel on both sides are nine in number; and though they approach each other very nearly, there is a line of distinction between the four (*Rex v. Richmond, Bartholomew, St. Philip Birmingham*, and *Holborn*,) that were relied upon by the one side, and the five (*Rex v. Castlechurch, Gresham, Grantham, Clayhydon*, and *Whittlebury*,) on the other. I cannot distinguish the present case from the four that were cited in support of the order; and it was decided in each of those that it was a dispensation with the service, and not a dissolution of the contract. Perhaps I should have had some difficulty in saying, in some of those cases, that it was only a dispensation with the service; but it is sufficient to say, that those cases were so decided, and having been so determined they ought not now to be shaken. But the cases cited on the other side are distinguishable from those, 'because in them the contract was dissolved by the mutual consent of both parties.' The distinction between the different sets of cases is certainly a very nice one, but I think that this case must be governed by the four to which I alluded; and if this be a question of evidence, it appears that the sessions by their determination have 'impliedly found that the parties did not consent to dissolve' the contract." *Grose*, J. "I consider the servant was wrongfully turned away. The master could continue in his house no longer, and the servant insisted on the whole year's wages, and was unwilling to leave the service."

Eastland v. Westhorsley, 1 Stra. 526; S. C. Fortes. 216; 2 Bott, 426. A servant was hired for a year: the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors. The court held this to be such a fraud in the master as should not prevent the settlement of the servant.

Rex v. Frome Selwood, Burr. S. C. 565; 2 Bott, 437. R. Stent, the husband of the pauper, was hired for a year at King's Weston, and served till within ten days of the end of it, when Stent declaring to his master that he wished not to be settled in King's Weston, asked his leave to go and visit his relations, to which the master consented. After the year was expired

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An information was laid against the keeper of a gaming house. He quitted it, and told his servants he had no longer occasion for their services, and paid the full year's wages; this is a dispensation.

Where a master turns away his servant to prevent his gaining a settlement, it is a fraud, and will not defeat the settlement.

A quitting the service because the pauper wished to be settled elsewhere, is fraudulent, and a dispensation only.

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A person hired for a year, and afterwards told by the master "he shall go away a fortnight at Michaelmas because of his settlement," and at the year's end is paid a year's wages, it is a dispensation, and not an exception.

Stent returned to his master, and then hired himself as a day-labourer, and as such continued with him three months. On making up their accounts Stent allowed out of his daily wages for the days he had been absent in the preceding year. The court held the settlement to be in King's Weston, regarding the consent of the master as fraudulent, and a mere evasion of the settlement.

Rex v. Sulgrave, 2 T. R. 376. The pauper, D. Plester, was hired in February, to Mr. Howes, of Stuchbury, till Old Michaelmas, and served him accordingly. On the Friday before Old Michaelmas his master asked him if he would stay again; the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. The pauper immediately went away, and having gone about ten yards, returned for something he had forgotten: he then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at Michaelmas, because of your settlement, and I will give you that fortnight to get what you can; to which the pauper agreed, and he accordingly went to his father's, and stayed a fortnight, during which time he worked for Mr. Chester in digging sand on Howes's land, and received from Chester 1s. a day, and once or twice during the fortnight he ate at Howes's; at the end of the fortnight he went to Howes's and continued to serve him at Stuchbury till Lady-day, when Howes removed, and the pauper with him, to Culworth. Howes soon after died, and the pauper continued to serve Mrs. Howes in Culworth, received his wages for that time, and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper apprehended that his master would not have hired him if he had not agreed to go away for a fortnight. Ashhurst, J. "The rule established in these kind of cases is this: 'where there is a *bonâ fide* exception of part of the time at the time of the hiring, that is not a hiring for a year; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master;' and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question whether it be one or the other must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket he told the pauper he should go away for a fortnight; but the contract was complete before that time, and what passed afterwards can only be considered as a dispensation from the service: for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the shilling earnest was to bind the agreement for one year for five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year, for serving him for a shorter period. If then the contract was complete before any thing was said relative to the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not made on the request of the servant, but as the offer of the master, and he said it was for the express purpose of preventing the pauper gaining a settlement. That is not such a reason as the court will give much countenance to. Whether the sessions might not have determined this on the ground of fraud, was for their consideration. As it is, there is no occasion to go into that ground, as we think this is a dispensation from service. As to the servant's apprehension, that cannot vary the case: we are to decide on the terms of the contract, not on the apprehension of the pauper."

Rex v. Willoughby, K. B. Easter T. 11 G. IV. MS. The facts were precisely the same as the above, and the sessions found that it was an exceptive

hiring, and the court confirmed it; *Parke, J.* observing "that the gift of the earnest being after the stipulation for absence, showed that the contract was not till then completed."

Rex v. Market Bosworth, 2 B. & C. 757; 4 D. & R. 306. Case:—The pauper was hired by and lived with Mrs. W. from Shrove Tuesday, 1821, till Old Michaelmas. Three weeks before Old Michaelmas Mrs. W. asked the pauper "to stay again." They agreed on wages, and an earnest was given. Nothing was said about time. A fortnight before Old Michaelmas her mistress said to her, "I have hired you," but mentioned no time; "remember you are hired for fifty-one weeks." The pauper said "Very well." She lived with Mrs. W. until Old Michaelmas day, 1822. She asked to have her week just before Christmas; Mrs. W. said, "You shall have three or four days now, I cannot spare you the whole week." She staid away three successive days and nights, and had the other four days at different times during the year, returning on each of them to sleep at her mistress's, and her mistress gave her two or three holidays besides; she never was absent without her mistress's permission, and always returned into the service, and at the end of the year received her wages. *Bayley, J.* "The question in this case ought to have been decided by the sessions. It appears that three weeks before Old Michaelmas the mistress asked the pauper to stay again, to which she replied, that she had no objection if they could agree about wages; they did agree for 3*l.* 10*s.* and one shilling earnest was paid: now it is quite clear that that constituted a general hiring for a year; and the question is whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for fifty-one weeks only, or whether it was a dispensation by the mistress with one week's service: now it is laid down in *Nolan* as a general rule, that where the absence of the servant takes place on the master's account and at his request, the courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Apply that rule to the present case. There having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for fifty-one weeks. The servant made no overture to the mistress for the change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation. In the first instance there was an hiring for a year at an entire sum of 3*l.* 10*s.*, and there is no stipulation afterwards that the pauper was to be paid wages for fifty-one weeks, at the rate of 3*l.* 10*s.* for the whole year; I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation of the service for one week, and the sessions were warranted in considering this either as a case of dispensation or of fraud. *Rex v. Sulgrave* (*ante*, 416) is an authority expressly in point; and *Rex v. Coggershall* (6 M. & S. 264) is another case which in principle bears upon this." *Holroyd and Littledale, Js.* concurred.

Rex v. Potter Heigham, *Burr. S. C.* 690; 2 *Bott*, 442. A servant, hired for a year, continued till the day before the end of his year, when he desired his master to discharge him; telling his master that as he had hired himself for the next year to a person in a distant place, he wished to pass that day with his friends; and requested to have that time to himself to spend with them. To which the master consented. And he was accordingly discharged; and then received the whole of his wages, except sixpence, which he allowed to his master for that day. The court held this not to be a dissolution of the contract, but an absence by leave of the master; and adjudged that the servant by this service gained a settlement.

Rex v. Bray, *Burr. S. C.* 682; 2 *Bott*, 440. On Thursday before Michaelmas-day, 1767, (a Saturday,) J. Hunt was hired for a year to J. Lee, of Bray, farmer, as a carter, to go into his service on the Monday following, until Michaelmas, 1768, for six guineas. At the time of the agreement Lee desired him to go into his service before Monday, but Hunt said it would not

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A mistress hired a servant from Shrove Tuesday until Old Michaelmas-day following, and three weeks before the latter day asked her to "stay again," to which the servant replied, she had no objection, if they could agree about wages. They agreed, and one shilling earnest was paid, but nothing said as to the time the service was to continue. A fortnight before Old Michaelmas the mistress said, "I have hired you," but mentioned no time; "remember you are hired for fifty-one weeks;" to which the servant replied, "Very well." The servant continued for a year under this agreement. She had three days' holidays at Christmas, and four other days at different periods, and at the end of the year received her wages: Held, to be a yearly hiring and service to confer a settlement.

If a servant on the last day of his year desire his master to discharge him that he may go and see his friends, and his master thereupon do so, deducting sixpence for that day, it is a dispensation.

Absence for a day at the beginning or the end of the year, either with consent of the master, or for a

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reasonable cause, may be dispensed with.

If the master give the servant leave to go thirteen days before his year expires, and pay him his full wages, it is a dispensation.

If the servant absent himself, with leave, for the last five weeks of his service, and pay his mistress the sum earned by him during that time, it is a dispensation.

Service with others, by first

suit him as he was then in service; and Lee replied, that if he would come into his service on Monday morning, he would shift all that time. He went into his service on the Monday. At the time of the agreement the pauper was in the service of J. Lewis, of South Stock, under a contract which expired on Michaelmas-day, 1767, which service he left on the night of the Michaelmas-day, 1767. He continued in the service of John Lee till the day before Michaelmas-day, 1768, when he desired leave of his master to go to see his relations before he went to another service; his master deducted one shilling from his wages for that day, and paid him the residue; he then went away and returned no more. On the pauper's going away Lee told him that if he quitted the service before Michaelmas-day there might be a dispute about his settlement, and desired him to come back. Lord Mansfield, C. J. "This is a hiring for a year, with a dispensation of the first day. The pauper thought he had his master's leave the last day, and had allowed a shilling for it, which is more than one day's wages. Both master and servant were clear that at the end of the year there was only an absence of one day, and at the beginning of the year the pauper had his master's leave for being absent the first day. Both master and servant meant it as a settlement."

Rex v. Richmond, Burr. S. C. 740; 2 Bott, 443. The pauper, W. Springall, was hired for a year to A. Crawford, Esq. of Richmond, on the 30th of October, to serve till the 30th of October following. On the 4th of September, the pauper married a fellow-servant, who had given a month's warning in August, and was to quit in September; but was desired by her master to stay till the 17th of October, which she did; and then the master said to Springall, that he supposed, as his wife was going away, he would like to do so too. The husband replied he should like it better, if it was agreeable to the master. His master said he had no objection, as he had another footman coming, and would pay him his whole year's wages: which he accordingly did on the 17th in full to the 30th. On the 17th both left the service. Lord Mansfield, C. J. "There is no necessity of an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again, that is, the subsequent consent of the master ratifies the act done. I am clearly of opinion, that the servant has in the present case sufficiently served his whole year. The master voluntarily gave him leave of absence for the last thirteen days; and, of his own accord, paid him the whole year's wages."

Rex v. Nether Hayford, Burr. S. C. 479; 2 Bott, 435. The pauper, John Gare, was hired for a year, to widow Bliss, of Farthingstone, and continued in her service until five weeks before the end of the year, when, with his mistress's leave, he parted with her and went to one Litchfield, at Kissingbury, and staid there the five weeks. After the end of the year, Gare went to Mrs. Bliss for his year's wages; she laid down the whole to him, and he voluntarily deducted 10s. for his five weeks' absence, being the sum he had earned and received for his five weeks at Kissingbury. If his mistress had, during the five weeks, required him to return to her, he would have done so. Lord Mansfield, C. J. "The question turns singly upon this, whether his absence for five weeks was a dissolution of the contract? If he had his mistress's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an absence with leave, for it appears that both parties considered the contract between them as subsisting, and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent, considering himself as her servant during that time. For otherwise the deduction would not have been a deduction of the particular sum earned by him, but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. Therefore we are all of opinion that the contract was not dissolved."

Rex v. Beccles, 2 Stra. 1207; Burr. S. C. 230. T. Elm was hired to a

blacksmith for a year, at 3*l*. During the year, the master gave him leave to work with another smith for three days, with a second for a week, and with a third for a fortnight, and agreed that the servant should have the advantage of it. After which he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away. The sessions thought the first contract was thereby dissolved. *Lee, C. J.* "It is only a license of departure for a certain time; the contract remains; the service by the master's consent with another person is service of the master; it is not necessary the service be with the same person. If it had been without the master's consent, the absence has been dispensed with by the master's thus receiving him again." The other judges concurred in opinion that this was no dissolution of the contract, but a mere lending of the service of his servant, than which nothing is more customary in harvest time.

Rex v. Goodnestone, Burr. S. C. 251; 2 Stra. 1232. W. Markham was hired for a year, and lived with and served his master, J. Wyborne, in Northbourne, till within three weeks of the end of the year, when he asked leave of his master to go to the herring fishery. The master consented, if he could get a man to do the master's work to his liking. Markham did so, and paid the man. Markham went to sea, and returned about three weeks after the end of his year; the master paid him all his year's wages. *Lee, C. J.* "I cannot distinguish this case from *Rex v. Beccles* (*ante*, 418), where absence with the master's consent was holden not to dissolve the contract. In the present case no dissolution of the contract is stated; leave of absence was given by the master, and he paid the whole year's wages."

Rex v. Barton-upon-Irwell, 2 M. & Sel. 329. J. Edwards was hired for a year as a servant to Watkins of Great Lever, whom he served about 19 months there. After having been in that service about two months, being then married, he was taken before a magistrate on the complaint of his master, and committed to the house of correction for one month. When he had been in custody nine days, at the instance of his master, he obtained a discharge from his imprisonment, returned immediately to Great Lever, and served him as before. On such return no mention was made of the terms on which he was to serve. He received no wages for the time he was in custody. By the warrant of commitment, it appeared that the pauper had been charged, upon the oath of Watkins, with divers misdemeanors, and not acting in his service as a servant ought to do: that the justices had convicted him of the offence so charged against him, and had sentenced him to be imprisoned in the house of correction, and there kept to hard labour for one month. The 20 Geo. II. c. 19, s. 2, enabled magistrates to commit or discharge from service, upon complaints before them between master and servant. Lord *Ellenborough, C. J.* "It would be clearly against the policy of the law, if the servant, by his own act of delinquency, should have the power of dissolving the contract. The justices have that power, but they have not exercised it. The imprisonment of the servant was so far from being a cessation of the service, that perhaps his labour might have been required of him by the master, even while he was in prison. Then what farther circumstances appear upon this case? It is stated that the master deducted the wages for the period during which the pauper was absent. But after that period he returns into the service, (then, indeed, he was married, but he goes on under the old contract,) and nothing passes between the master and the servant with respect to any alteration, or any new contract, during the remainder of the 19 months. The master, indeed, had an election to avoid the contract, but he made his election to continue the pauper in his service, which it was in his power to do." *Le Blanc, J.* "I think there was not any dissolution of the contract; the master might have discharged him, but he did not: he must then have returned on the footing of the old hiring. It is said, there was an interruption of the service; but during the whole time he was subject to his master. It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution. The master perhaps might have elected to dissolve it, but he has not done so. Neither do I think this was an interruption of the service to prevent a settlement." *Bayley, J.*

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master's consent, he taking the servant again, is service under a dispensation.

So where a servant procure another to take his place for a time, paying him himself, and receiving from his master his whole year's wages.

A yearly servant, on complaint of master, was committed, and after nine days' confinement, was discharged, and returned, and served out the year: Held, that the imprisonment did not dissolve the contract.

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Where a female servant, who was fined for a malicious trespass, was advised by her mistress not to pay the fine but go to prison, this is a dispensation.

"The relation of master and servant continued notwithstanding the commitment of the servant procured by the master. The commitment did not set free the servant from his contract to go wherever he pleased after the imprisonment ceased. That would be allowing him to avail himself of his own wrongful act. Then, as to the service during the nine days, perhaps the servant could not strictly be said to be actually serving while in prison, but there was a service for more than a year under a hiring for a year." *Dampier, J.* "It seems to me that the master had no intention of dissolving the contract, for instead of that, he hastens back the return of the servant by begging off his punishment for the whole of the period, except nine days." Orders quashed.

Rex v. Coningsby, 3 N. & M. 199; 4 B. & Ad. 156. E. Flintham, single woman, was removed from Coningsby to Stickney. Order quashed. Case:—A few days before May-day, 1829, the pauper was hired by Mr. Gosling from the same May-day at the wages of 3*l.* 10*s.*, and went into his service in Stickney on that day. About harvest time in the same year, she was apprehended upon the complaint of W. Foster, her master's neighbour, on a charge of having wilfully and maliciously damaged property belonging to him. The magistrates before whom the complaint was heard fined her, and she not paying the fine, was committed to prison for one month. It was by the advice of the mistress (who was present at the hearing of the complaint) that the pauper went to prison instead of paying the fine. When she was taken to prison, her mistress told her she was to return when her time was out; and she also sent her provisions occasionally during her imprisonment. She was discharged at the end of the month, returned immediately to her master's, and went about her work as usual. She staid in the service till May-day, 1830, and on going away received her whole wages. The question for the opinion of this court was, whether under these circumstances she gained a settlement in the parish of Stickney. *Denman, C. J.* "This head of settlement is made to depend upon two things—first, there must be a hiring for a year; and secondly, an abiding and continuance in the same service for a whole year. Those words strictly construed would perhaps import actual service. It has been decided, however, that there may be a dispensation by the master with the performance of the servant's duties for a time, and that during such period there is a constructive service sufficient to satisfy the words of the statute. The consent of the master to dispense with such service may be either express or implied, and it is implied where the servant having absented himself for a time, has returned to the service, and been received by the master, and had his full wages paid. I think in this case the absence of the pauper during the imprisonment must be taken to have been with the consent of the mistress. It may be collected from the statement that the pauper could have paid the fine, and that the mistress interfered to prevent her. After the term of imprisonment expired, she received her back, and paid her her full wages. It has been ingeniously argued that the absence here was not permissive, because the law compelled the pauper to be imprisoned unless she paid a fine. But she had her election either to pay the fine or go to prison, and she did the latter by the advice of her mistress, who supplied her with provisions during her confinement. It seems to me, therefore, that the service was dispensed with by the mistress. *Rex v. Westmeon*, (*Cald.* 129, *post.*) and *Rex v. North Cray*, (*Cald.* 495, *post.*) are distinguishable, for there the masters did not consent to the absence, and showed their dissent in the most effectual way by deducting from the wages." *Parke, J.* "To constitute a settlement by hiring and service, there must be a hiring for a year and a service for a year, but the service need not be actual; of necessity it may be constructive, because no servant serves his master every hour of every day, and a dispensation from service may be implied. Even in the case of a wilful absence, it has been held that if a master receive back his servant afterwards, and pay him his wages, that is a dispensation with the service during the period of absence. In *Rex v. North Cray*, and *Rex v. Westmeon*, the absence of the servant was wilful, for the imprisonment was occasioned by his own misconduct; but those cases are distinguishable from the present, because the pauper never

returned to the service after the imprisonment. Absence during imprisonment, like absence from other causes, may be purged by consent. It has been said that the master, during the term of imprisonment, could not recal the pauper to his service. But as Mr. *Clinton* has observed, the same may be said where the absence is occasioned by illness proceeding from the misconduct of the servant, or where the servant during such absence is at a great distance from the master." *Taunton, J.* "I am of the same opinion. *Rex v. North Cray*, and *Rex v. Westmeon*, are distinguishable, because it did not appear that the master again received the servant into his service; but I cannot help thinking the good sense to be in what is stated by Lord *Mansfield* and *Buller, J.*, in *Rex v. North Cray*. The pauper, eight or nine days before the expiration of the service, had been committed for not giving security to indemnify the parish as the father of a child likely to be born a bastard, and Lord *Mansfield* says, 'The single question is, whether the pauper served his year, in fact he did not, did he then constructively? There is not a pretence that the master consented to dispense with the time he did not serve; his absence and imprisonment were the consequences of his own criminality. His imprisonment was not illegal.' Those observations apply to the present case; and I think this doctrine of dispensation has been carried too far. The current of authorities, however, compels me to say there may be a constructive service even during the time for which the servant is committed in execution for misconduct; and I yield to authorities, not to reason." *Patteson, J.* "I think that we are bound by the authorities to hold that there was a dispensation with the service during the time the pauper was imprisoned." Order of sessions quashed.

Rex v. Hallow, 2 B. & C. 739; 4 D. & R. 299; 2 D. & R. Mag. Ca. 210. Thomas Hewett, &c. were removed from Powick, in Worcester, to Hallow. Order confirmed. Case:—The pauper went into the service of J. Price, of Tibberton, having been previously hired by Price, at Pershore Mop, a few days before Old Michaelmas, when the pauper's previous service in Hallow expired, to serve Price as waggoner's boy, from Old Michaelmas to Old Michaelmas following, at the wages of 5*l.* The pauper went into the service of Price, and remained with him till about a month before the said Old Michaelmas-day, when disputes having arisen between Price and the pauper, in consequence of his having charged the pauper with misconduct, Price caused the pauper to be summoned to answer such charges before P. G., a justice. Price and the pauper appeared before P. G., and the complaint was heard, and upon the hearing it was agreed between P. G. and Price, that the pauper should either beg Price's pardon, and be received back into his service again, or if the pauper refused to beg his pardon, that he should remain the rest of his year in prison. The pauper refused to beg Price's pardon, whereupon he was committed for one month. The year for which the pauper had been hired expired two days before the expiration of the month for which he was committed. The pauper remained in gaol during the whole of that month, and left the gaol at the expiration thereof. During his imprisonment, the pauper's clothes remained at Price's; and when the pauper left the gaol, he went to Price's and took away his clothes, and received from Price all his wages, with the exception of 7*s.*, which Price deducted for the time the pauper had been in gaol, and he then quitted Price's house.—*Abbott, C. J.* "I am of opinion that there was a complete service for a year, notwithstanding the commitment under 20 Geo. II. c. 19; but I wish to be understood as speaking of a commitment under that statute only. The second section is for the punishment of servants in the character of servants. It gives the magistrates power to put an end to the service, if he thinks fit: when that power is exercised it puts an end to all questions of settlement. But the statute gives another power also, viz. that of imprisoning the offending party for any period not exceeding one month. If an imprisonment for a month, under that provision, defeats the settlement, imprisonment for a week, or even for a day, must have the same effect. There is nothing to show that the legislature contemplated or intended to produce such an effect. I therefore think that a servant committed under the statute in question, must be consi-

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A master hired a servant for a year; at the expiration of eleven months he made a complaint against him before a justice, who, under the 29 Geo. 2, c. 19, s. 2, committed the servant to the house of correction for one month, which expired after the end of the year for which he was hired: Held, that this was a constructive service for a whole year.

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dered as abiding in the master's service, within the 8 & 9 Will. III. c. 30. Bayley, J. "I am of opinion that this case falls within the distinction taken by *Le Blanc, J.*, in *Rex v. Barton-upon-Irwell*, (*ante*, 419). He there says, 'It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution.' So here the pauper was imprisoned at the instance of the master. The latter might have pressed for a dissolution of the contract, but, instead of that, there was an understanding between him and the justice, that the pauper should either beg his master's pardon, or remain the rest of the year in prison. It has been conceded that that does not operate as a dissolution, and I think it may be put either as a constructive service or a dispensation. In the case cited, it was held that the servant gained a settlement; and I cannot see why the imprisonment should have a different effect at the end from that which it had in the middle of the year. It has been urged in argument, that the master, by taking the servant back, is to be considered as dispensing with his service during his absence. But the contract not being dissolved, if the servant were released from prison before the end of the year, the master would be under the necessity of receiving him." *Holroyd, J.* "There is a great difference where the servant's absence from actual service arises, as in this case, at the instance of the master, and where it is occasioned by any criminal act done by the servant, and independently of the master. The ground of the commitment of the servant, was absence from his duty for a day: possibly the master might have had a right to discharge him for that neglect; but he neither did that of his own authority, nor applied to the justice to do it, so that the relation of master and servant continued. I think that the service also continued, just the same as if the occurrence had happened in the middle of the year. The servant being imprisoned and punished as a servant, might have insisted upon going back to his master, or the master might have compelled him to return, as soon as he was discharged out of custody."—*Little-dale, J.* "In this case neither the master nor the justice having discharged the servant, the relation of master and servant continued. Then the servant, when in prison, did not absent himself voluntarily from the master's service. The imprisonment was at the instance of the master; the servant might still be ready and willing to work for him. I am therefore of opinion, that it must be considered as a constructive service." Order of sessions quashed.

If a person, after being hired for a year, is prevented by illness from entering upon his service at the time agreed, and upon going to his place, his master refuse to receive him, and then he continue there, agreeing to take whatever he should be allowed, the service only commences at the second agreement.

Rex v. Winterset, Cald. 298; 2 *Bott*, 379. The pauper, George Challenger, was hired at Barnsley statutes, which are held a few days before Martinmas, to Thomas Oundsworth, of Stainsburgh, for one year, received 1s. for his godspenny, and was to have three guineas wages; the very night of the hiring the pauper fell ill, and continued sick and unable to go, and did not go into his service till a month after Martinmas, when the pauper and his mother went to the master's house, who being from home, they were shown to his wife, who complained that the pauper had not come to his service according to the agreement, and therefore refused to receive him: whereupon the pauper's mother said, "we must fall into your will for wages, and take what you will allow us;" and left the pauper in his service, where he continued till Martinmas following; when the mother was sent for, and received for forty-eight weeks' wages after the rate of 1s. 2d. per week, being less than the rate of the original wages. By Lord Mansfield, C. J. "The service had never commenced under the first contract; if it had, no doubt the master must have supported him in his sickness. But that is not the question; the point is, that the agreement acted upon here was a fresh agreement when he recovered from his sickness, and the beginning of his service was then. Under the former, the mistress refused to receive him. Then considering the old contract at an end, the actual service was but for eleven months, that is, to the Martinmas next; and the submitting to the abatement of the month's wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the legal or constructive service; it shows also that there was no hiring for a year, so that both the hiring and service must be considered as imperfect and ineffectual." *Buller, J.* "If a servant be taken

ill, after the service has commenced, the master is bound to support him, and cannot turn him away on that account. (a) But it is not true, that the service began under the first contract. That was executory. It was made some days before Martinmas to commence at Martinmas; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced."

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4. *Of Change of Master in the same Service. (b)*

4. *Of change of master, &c.*

It is not essential that the whole year's service should be under the same master or mistress, though there must be an identity in the service. The removal, therefore, of the master with whom the contract was made, and the service commenced, either by death or by the transfer of the farm or establishment to another person, will not prevent the servant from gaining a settlement, by continuing the service under the new master to the end of the year. This rule of settlement law has been considered so little disputable, that very few cases upon it have been brought before the Superior Court.

Rex v. Ivinghoe, 1 *Ses. Ca.* 121; *Sett. & Rem.* 109; 1 *Stra.* 90; 2 *Bott*, 293. Nicholas Young was hired for a year to John Knight, who rented a farm in Ivinghoe, and he lived with him half a year, who then paid him half a year's wages, and let the farm to Smith, who entered, and took all the stock and servants, and in harvest time took Young off from keeping sheep, and sent him to harvest work, for which he paid him 5s. extra, and at the year's end paid him the other half year's wages. No words passed about dissolving the contract with Knight when he left the farm, or making any new contract with Smith. The question was, if this shall be deemed the same service, so as to gain a settlement? *Pratt*, C. J. "This is a good settlement: if a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; and the 5s. given by Smith does not alter the case, it is no more than if a gratuity be given by a neighbour to a servant for his extraordinary trouble when lent by his master to such neighbour for a week or so. What agreement there was between Smith and Knight *non constat*, but here is no act done by the servant, which shows his consent to change his master; the contract not being destroyed, he might have brought an action against the first master." The other judges concurred; *Fortescue*, J., saying, "The difficulty arises upon the word *same*, which may extend to *master*, *parish* and *business*. And taking it in those senses, this case comes within the words of the statute; and there can be no doubt it comes within the reason of it; for he is no more likely to be chargeable now, than if he had actually served Knight all the year."

If the master let his farm, and the servant continue with the lessee for the remainder of his year, it will give him a settlement.

Rex v. Ladock, *Burr. S.C.* 179; 2 *Bott*, 277. J. Roberts was hired for a year in Ladock. His master died within the year, leaving W. Huddy, of St. Enoder, his executor. The executor asked the servant if he was willing to serve out the year with him. The servant agreed to it, and did serve the executor in St. Enoder during the remainder of the year. By the court: "This is a continuance of the same service; the contract was not dissolved by the death of the master, and the servant gained a settlement in St. Enoder. And this is a stronger case than that of *Ivinghoe*, the assignee of the farm in that case being a mere stranger; whereas this was the case of an executor on whom the law casts a privity of contract." (See also *Rex v. Hardhorn-with-Newton*, *ante*, 414.)

So where the servant continues with an executor for the remainder of the year.

5. *Of Dissolution. (b)*

5. *Of Dissolution.*

A dissolution of the contract may be effected by the consent of the parties or by act of law.

(a) But see "*Casual Poor*," *ante*, 96. (b) See divisions of the subject, *ante*, 331.

2. *The Service under the Contract.*

If a master and servant part three weeks before the year expires, by mutual consent, and the servant therefore abate part of his wages, it is a dissolution of the contract.

Where a servant, with his master's consent, left the service a few days before the expiration of the year, and was paid the whole year's wages, he gained no settlement.

Where a servant on being paid his wages for the time he had served, left the service, but afterwards returned and served the remainder of the year without further agreement, it was held to be a dissolution.

Where before the end of the year, the mistress asked the servant whether she choose to go away on a certain day (within the year), assigning as a reason that she had hired a new servant, who wished to come to her then, and the servant said it was immaterial to her, and agreed to go, which she did; the court thought it sufficient to dissolve the contract.

Pawlet v. Burnham, Fol. 187; 1 Sess. Ca. 71; 2 Bott, 424. The pauper covenanted with R. A. to serve him for a year, but three weeks before the expiration of the year departed from the service with his master's consent, and abated 6s. out of his wages for the remainder of the year. It was contended that as the case stated the pauper to be a covenant-servant, which must be presumed to be by deed, he could not be discharged by parol consent, and therefore he continued a hired servant during the year. The court: "Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens*? As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant; and as to that point the service continued, but not as to gaining a settlement, where the statute saith he must serve for a year, which this man hath not served."

Rex v. Castlechurch, Burr. S. C. 68; 2 Stra. 1022; (a) 2 Bott, 304. The pauper was hired for a year, and served from the 7th January to the 26th of December following, when he went away with his master's consent, and took his clothes with him, and was paid the whole year's wages. Lord Hardwicke. "I should think this is not a good settlement. The legislature has expressly determined the time of service; they require that it shall continue for *one whole year*. In this case the contract was determined, and the pauper ceased to be a servant to the master. If so, he could not be said to continue in the service during the twelve days, and consequently it was not a service for *a whole year*." The other judges concurred.

Rex v. Ross, Burr. S. C. 688; 2 Bott, 441. Thomas Chest, the pauper, hired himself for a year to Edmund Miles, and served him in Langarren only three days. A difference arising between them about the business the pauper was employed in, Miles bid the pauper go about his business. On which the pauper immediately ran away and quitted his service, and hired himself to John Whitby for a year, and served Whitby for six months in Whitchurch. Miles then insisted on Whitby's not keeping the pauper in his service. Whitby paid the pauper his wages to that time, and the pauper quitted that service, and went one or two voyages up the river Wye, as labourer to a barge-master, for a fortnight. Then at Whitby's request, and with Miles's consent, he returned into Whitby's service without coming to any new agreement, or any mention of wages, and continued in Whitby's service in Whitchurch seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages. It was argued that the fortnight's absence being in the middle of the year, it was purged by the master's receiving him again. But the court said "Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring."

Rex v. St. Peter of Mancroft, 8 T. R. 477. The pauper was let to Mrs. Morton, about a fortnight before Michaelmas, 1797, by a letter sent by Mrs. M. to the pauper's friends, stating that she gave 3*l.* a year wages, on which the pauper agreed to go, and sent to her mistress to let her know when she should come, and in consequence of a second letter desiring her to come on Thursday the 11th day of October, she went to her service on the 12th of that month; on her going her mistress objected to her not having come the day before, for which the pauper gave as a reason, that she had only quitted her last place late on Old Michaelmas-day. About three weeks after she went, the pauper said to her mistress that it was proper to come to some agreement, as they had never had any further than a few lines, to which her mistress answered, "You know what wages I sent you word, and as the general way is to let for a month's wages or a month's warning, I do not wish to confine you for a year:" but did not say any thing about not choosing to

(a) By the report in *Strange* it appears that the servant went away without leave, stayed till the year was up, when he returned for his clothes, and was paid his whole wages.

hire for a year; she received her wages quarterly, and about a fortnight before New Michaelmas-day her mistress asked her whether she chose to go away on New Michaelmay-day or Old Michaelmas-day, assigning as a reason for her asking, that she had hired a new servant, who wished to come to her at New Michaelmas. The pauper said it was immaterial to her, as she had not got a place, and agreed to go at New Michaelmas, which she did, at which time the other servant came into her mistress's service. Her mistress was not in a condition of life to keep two servants; and if a place had offered at New Michaelmas, the pauper looked upon herself as in a situation to take it, though when she first got to her mistress she considered herself as to live with her until Old Michaelmas. Upon quitting her service upon New Michaelmas-day, which was a fortnight after the agreement to go, her mistress paid to her the whole which remained due of the 3*l.* wages, although at the time when the pauper agreed to go away at New Michaelmas, nothing was said about wages. The pauper would not have objected to going away at New Michaelmas, if her mistress had proposed to make a deduction for the time, but would have mentioned it to her, and told her she was willing to stay till Old Michaelmas. The pauper liked to go away at New Michaelmas rather than Old Michaelmas, but would not have stayed after Old Michaelmas if her mistress had requested it. The pauper considered the conversation which passed on the fortnight before New Michaelmas, as a month's warning to go away at Old Michaelmas. When this case came on for argument, Lord Kenyon, C. J. said "That upon this case, as disclosed, there was strong evidence to induce the sessions to adjudge that the contract between the mistress and the servant was dissolved before the end of the year, and consequently that the latter did not gain a settlement in St. Peter's, Norwich. That the distinction established in all the cases was perfectly clear, that where the servant continued liable to serve during the whole year, though the master dispensed with the actual service for any part of it, the servant gained a settlement, because the relation of master and servant subsisted all the year, and the master might resume the right to the service if he chose; but that where the parties absolutely put an end to the contract before the expiration of the year, as in the present case, the servant did not gain a settlement. That though it was at first doubted whether or not the master could dispense with the service at the end of the year, so as to give the servant the benefit of the contract for the purpose of a settlement, it had been long settled that it was immaterial whether the service was dispensed with at the beginning, the middle, or the end of the year." *Grose, J.* "The sessions should state the result of the evidence, and in a case of this kind, they should state the fact one way or the other, whether this were a dispensation with the service, or a dissolution of the contract." The counsel in support of the order of sessions saying there were reasons that would probably induce the sessions to decide that there was a dispensation with the service, the court ordered the case to be sent down to be re-stated.

Rex v. Whittlebury, 6 *T. R.* 464. J. Roberts was hired by J. Grimsdick of Paulerspury, from Michaelmas to Michaelmas, at the wages of 50*s.* He entered into and continued in the service until five days of the end of the year, when he went to Towcester statute to seek for a place: while he was there he was suddenly taken ill of a fever, which continued for six weeks, and he was deprived of his reason a part of that time; he went from the statute to his mother, but neither of them having any money to maintain him during his illness, he that night desired his mother to go to his master for his money, and to bring away his clothes; the mother went the next day, and at her return she brought his money all but 1*s.* which his master had stopped for the remainder of the year, and gave it to him together with his clothes, with which he was satisfied, and he thought himself at liberty to hire himself to another master if he had been well enough. Lord Kenyon, C. J. "I confess I have not been able to raise the least doubt in my mind on this

2. *The Service under the Contract.*

The servant being taken ill, sent for his clothes and money, which his master sent, deducting for the absence during illness: Held a dissolution. (a)

(a) "Dissent shown in the most effectual way, by deducting the wages," Lord Denman in *Rex v. Coningsby*, 1 *Nev. & M.* 199; 4 *B. & Ad.* 156, *ante*, 420.

2. *The Service
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case. There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, or in the middle, or only a day before the end of it; and if they do, the servant gains no settlement, because the act requires that the relation of master and servant should continue during a whole year. It is not necessary here to decide whether in every case the receipt of wages before the expiration of the year puts an end to the contract, or whether a servant being taken ill during the year, the master can of his own authority discharge him, and put an end to the contract, or whether in such a case justices may put an end to the contract; but it is here stated that five days before the end of the year (and it is immaterial whether that happened five months or five days before the year expired), the pauper sent his mother to his master for his money, and the latter paid the wages stipulated for the whole year except 1s., which he deducted because the whole year's service was not performed. As far therefore as the master had the power, he did put an end to the contract before the end of the year; he had no right to deduct the shilling, but on the ground that the pauper did not continue his servant until the end of the year. Then what was the conduct of the servant? He received his money, saying that he was satisfied; and it also appears that he thought he might have hired himself to another master before the end of the year. One party said I put an end to the contract as far as lies in my power; the other said I also agree to put an end to it as far as respects me; therefore both parties, whose consent was necessary, did consent to dissolve the contract before the expiration of the year." *Grose, J.* "It must be remembered that when the servant sent for his money, his wages were not due; no money was due till the year expired, or till there was an end of the contract. The message therefore was an offer by the servant to put an end to the contract." *Lawrence, J.* put it on the same ground.

A servant is taken ill, and receives his whole year's wages, and voluntarily leaves the service to go to the hospital, and never returns, this is a dissolution.

Rex v. Sudbrooke, 4 East, 356. The pauper hired himself for a year, and after eight months, being too ill of a fever to do his work, his master paid him his whole year's wages when he left his master's service and went to the hospital, and never returned into the service. (a) *Lord Ellenborough, C. J.* "The doctrine of dispensation has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily left his master's service before the end of the year, when his master paid him his whole year's wages; we must therefore take it, not only to be a ceasing to abide, in the words of the act, but a relinquishment of the service altogether. After that, neither party could maintain any action against the other for the affirmance of the contract or continuance of the service. Then if neither had any remedy against the other upon the contract, or any compulsory means of enforcing its execution, it must be dissolved in point of law. In *Rex v. Christchurch*, at the time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered, for she was sent to Mr. L. at her master's desire, and with a request from him to take her in, and if he refused she was to return to her master. I do not overlook the circumstance pressed upon us, that there was an advance of the whole year's wages before the end of the year; but the same circumstance occurred in *Rex v. Godalmin* and *Rex v. Castlechurch*, and yet no settlements were there holden to have been gained by the servants who quitted their master's service before the end of the year by mutual agreement." *Lawrence, J.* agreed that the question to be considered was, whether the master did or did not retain his control over his servant during the whole year? It is stated the servant left his service, by which we are not merely to understand that he left the house, for that would not be a leaving of the service, unless the contract were dissolved. *Le Blanc, J.* said "That however we may lament that the words of the statute have been departed from, yet as an extended construction of it has been made in some cases, if this case come within the words and precise

(a) It was assumed as a fact, that the pauper continued ill during the remainder of the year. See 4 East, 356, note.

determination of those authorities, we must have abided by them; but unless it could be shown to fall within some precise determination, the court will not extend the departure further. I do not found my opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital, but that I think that the parties came to a determination to put an end to the contract. The servant's illness cannot enable the master to determine the contract; but if the servant should choose, on account of illness, to go away, illness cannot prevent him from coming to an agreement with his master to put an end to the contract. Did they agree here? The servant received his whole year's wages, went away before the end of the year, went to the hospital, and never returned to his master again. Are we not to conclude that this was done by mutual consent? *Rex v. Castlechurch* shows the payment of the whole year's wages makes no difference if the parties agreed to put an end to the contract before the end of the year. And that though illness would not enable one of the parties to put an end to the contract, it might still induce both to come to such an agreement."

Rex v. Rushall, 7 East, 471. The pauper sometime before Old Michaelmas-day, 1802, the time at which the service in which she was then living, at Wiston in Sussex, was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with Mrs. Peck of Rushall, Wiltshire, who informed the mother that she would give her daughter the same wages as she did her other servants, (being ten guineas a year, and a guinea for tea,) and wait till she came down, and desired that she would come as quickly as she could; but the mother made no absolute agreement for her daughter, but afterwards informed her that she had got a place for her, if she liked it. The pauper left her service at W. immediately on its expiration, and went without delay to her mother's; and on Monday, the 18th, Mr. P. applied to her, to know if she liked to come into his service, saying that he wanted her to come immediately, as he had company to dinner. She went to Mr. P.'s house, and then it was, for the first time, agreed between Mr. P. and her, that the wages should be ten guineas for the year, and a guinea for tea, with liberty of parting at a month's wages or a month's warning. She then went to work, and continued in Mr. P.'s service until Old Michaelmas-day following. About five weeks before that time she gave her mistress notice that she should quit her service at the next Old Michaelmas-day. On Old Michaelmas-day, 1803, the pauper came to her mistress to receive her wages, who paid her her whole year's wages and the guinea for tea, but told her she wanted a week of serving out her year. The pauper said she was willing to stay out another week; but the mistress replied that it did not signify, as she had got another servant in her place, who was then in the house (which in fact she was). She then left the house, and never returned into the service afterwards. Lord Ellenborough, C. J. "The case expressly states that the mother made no absolute agreement for her daughter. The daughter arrived at Rushall about a week after Old Michaelmas-day, when upon Mr. P.'s application to her to know if she liked to come into his service, she went there, and then it was, as the case states, for the first time agreed between Mr. P. and her, &c., with liberty (which was not before mentioned) of parting at a month's wages or a month's warning; this was on the 18th of October. Then about five weeks before Old Michaelmas-day the pauper gave her mistress notice to quit at Old Michaelmas-day. The mistress could not object to receive the notice, and, therefore, looked out for another servant; but when the pauper went to receive her wages, the mistress paid her the whole year's wages, but told her that she wanted a week of serving out the year. The pauper then said, indeed, that she was willing to stay another week; but as the mistress in consequence of the warning which the pauper had given her, and which she had accepted, had provided herself with another servant, and did not want two of them, she told the pauper it did not signify, as she had got another servant in her place, on which the pauper left the house. There can be no doubt upon this statement, that both parties agreed to put an end to the service before the end

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Terms had been mentioned, but no agreement made till a week after Old Michaelmas, when the servant entered upon the place. She continued till Old Michaelmas-day of the following year, and then left by mutual agreement, having previously given a month's warning. It was mentioned between them that she had not completed her year by one week, but she received the whole year's wages: Held a dissolution.

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Rule for deciding the fact of dissolution.

The pauper was hired at four pounds wages, but the duration of the service was not mentioned; when he went into the service afterwards, as agreed, the master told him he had forgot to mention, that it was not the custom to hire for more than fifty-one weeks, and that he must therefore hire him again for that time, to which the pauper assented, and received fresh earnest. He remained in the service the fifty-one weeks, and received the four pounds: The sessions thought this a dissolution of the original contract, and the court adopted their finding.

of the year. The servant gave above a month's warning to quit at Old Michaelmas, which she had a right to do, and the mistress accepted the warning, and both parties acted upon it. And this, it appears, was in fact before the end of the year, whatever the servant might have supposed when she gave the warning. Now 'the rule,' which the Court has laid down as the test, whether the circumstances attending the departure of a servant before the end of a year amount to a dissolution of the contract, or only to a dispensation of the service, is 'whether the master has the power afterwards of compelling the continuance of the service; if he have not, there is an end of the contract; if he have, but choose to dispense with it, it is a dispensation.' If after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not; and that is a fair test that the relation of master and servant had ceased to exist." *Le Blanc, J.* added, "The mistress accepted the notice not as being to quit at the end of the year, but as a month's warning." Both orders quashed.

Rex v. Bottesford, 4 B. & C. 84; 6 D. & R. 99; 3 D. & R. Mag. Ca. 24. *J. Whitehead* was removed from Bottesford to East Bridgeford. Order quashed. Case:—The pauper was hired at the Bingham statutes, which happened about three weeks before Martinmas, 1818, to serve Huskisson of East Bridgeford as a servant in husbandry, for 4*l.*, and received 1*s.* earnest; but no time was mentioned. He was to go into the service about a week after Martinmas, at the regular time for husbandry servants to enter their places. He entered into the service a week after Martinmas, 1818; on the same day his master said to him, "It is not the custom to hire servants in this parish for more than fifty-one weeks, which I forgot to mention to you at the time I hired you at Bingham statutes, and therefore, if you have no objection, I must hire you afresh for fifty-one weeks, and give you another shilling for an earnest," when the pauper accepted of such earnest. The pauper was never out of Huskisson's service from the first moment he came upon the premises, and remained therein until the day after Martinmas, 1819, when he quitted his place, along with the other servants, having first received his wages of 4*l.* *Abbott, C. J.* "I think the sessions came to the right conclusion. I agree that there was originally a contract operating as a hiring for a year, but the service under it was a service commencing a week after Martinmas. It is stated that the pauper was hired three weeks before, but he was to go into the service a week after Martinmas. There is nothing to show that the service was to commence sooner. Certainly it was not to commence on the day the contract was made, for that was entered into three weeks before. If then it was a hiring for a year, the service to commence the week after Martinmas, it is clear that there has not been a service for a year. Did then the master dispense with the service for the last week, or was the original contract rescinded? The case states, that on the same day when the servant arrived at his master's house, the latter said to him, 'It is not the custom to hire servants in this parish for more than fifty-one weeks, which I forgot to mention to you, and therefore if you have no objection, I must hire you afresh for fifty one weeks, and give you another shilling for earnest;' when the pauper accepted the earnest. I consider that as a dissolution of the original contract, and the substitution of another. If this was a fraud, (although I have great difficulty in saying what is a fraudulent contract in this respect,) the sessions ought to have found fraud. They have not done so. I, perhaps, should not have interfered to set aside the decision of the sessions, if they had drawn a contrary conclusion, but I should not have been so well satisfied with it." *Bayley, J.* "I agree that there may be a dispensation at any period of the year; but whether there is a dispensation or not, is a question of fact for the sessions to decide. If there had been a hiring here for a year, to commence at Martinmas, and the contract had not been dissolved by the express consent of both parties, then the sessions might have drawn a conclusion different from what they have drawn. Suppose this to have been a hiring for a year, that might be dissolved. But still that was for the sessions to decide. If there was fraud in the case, that was for

their decision. My own judgment is, that the sessions have drawn the right conclusion from the facts stated." *Holroyd, J.* "I think it cannot be taken, from the manner in which the case is stated, that this was originally a hiring from Martinmas. The latter part of the case removes all the doubt I had entertained as to whether this was to be considered as a hiring for a year, and a dispensation of the first week's service; for what afterwards takes place must be considered as a dissolution of the original contract with the consent of both parties." *Littledale, J.* concurred.

Rex v. Thistleton, 6 T. R. 185; 2 Bott, 339; 1 Nol. P. L. 420, 428, 463. The pauper was hired to Mr. Raworth, of Knawston, from Martinmas to Martinmas, and entered upon the service. Before the end of the year he went to Billesden statutes, and hired himself to Mr. Humphreys, of Billesden, to enter into his service on the 19th of October, if Mr. R. would let him come then, and if he was refused, he was then to come at the end of his year. The next day the pauper asked his master to let him go, who said he could not spare him; he must get a new servant first: some time after he hired a new servant, and then said, "I have got a new servant, you may go now; I have not work for you both." The master then paid him his whole wages, and he went away. This was about a fortnight before Martinmas, and he entered into his new service in three days. Lord *Kenyon, C. J.* "The distinction between the different cases upon this subject seems to be this; if the pauper be absent from the service with the concurrence, remaining however subject to the control, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service; but if the master has once parted with his control over the servant, there no settlement is gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between those parties, it was evidently the intention of both that the pauper should become *sui juris*, and should be enabled to contract with another master. The cases, in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid: but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased." *Grose, J.* "If we were to say that the service for the latter part of the year was service performed under the first master, we should determine that he was serving two masters at the same time, which would be contrary to the statute."

Rex v. Great Chilton, 5 T. R. 672; 2 Bott, 268; 1 Nol. P. L. 415, 447. The pauper was hired at Martinmas, by W. Grenwell, of Great Chilton, as a servant in husbandry for a year, commencing from Martinmas, (11th Nov.) his wages were to be about 8*l.* with meat and lodging, in his master's house. He entered upon his service at Martinmas, and resided in his master's house. In January following he married, but continued as a menial servant with Grenwell until May-day following. Some days before May-day, Grenwell and he agreed that he with his wife should go as a hind to reside on and manage another farm which Grenwell had in the same township; this second agreement was for a year from that May-day, and he was to have 5*s.* a week, the house to live in rent-free, and some other trifling perquisites, as persons in that capacity usually have. He served as a hind two years from that May-day, being all that time a married man. Lord *Kenyon, C. J.* "This case appears to me not free from difficulty and doubt: but upon the whole, I think that the pauper gained a settlement in Great

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If the master, at the servant's request, give him leave to go to another service, before the end of the year, though he pay him the full wages, it is nevertheless a dissolution.

During the service under a hiring for a year, a second agreement for another year, to commence immediately, at different wages, and for a different sort of service, is a dissolution, and not a mere variation of the first contract. (*C. J. dissentiente.*) (a)

(a) See *Rex v. Buckingham*, 3 Nev. & M. 72; 5 B. & Adol. 953; ante, 404.

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Chilton. To *Rex v. St. Giles's, Reading* (*ante*, 407), I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service; he was then unmarried: when the year expired, there was an end of the contract; by continuing in service after that time, the court would infer a second hiring for another year: but at the end of the first year he was a married man, and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case the pauper was unmarried when he made the first agreement; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement, if he served out the remainder of the year under the original agreement made before his marriage. But it has been contended that that contract was dissolved. I admit, that if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in Great Chilton, but I do not think that that was the case. An alteration, indeed, in the man's situation took place: perhaps it was more convenient for him to live with his wife in a separate house than to continue to live in his master's family, and therefore it was agreed that he should go to another farm of his master's in the same township. But that alone did not put an end to the former contract. If a master, who had kept house, and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected that the servant's employment after his marriage was different from that under the original contract; but I cannot discover much difference, for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a settlement by completing a year's service, notwithstanding such a change in his station. In this case also there was a prolongation of the time of service, and he was to continue half a year beyond the period originally agreed upon; there was also an alteration of wages adapted to his change of situation: but I do not think that either of these circumstances affects the case. *The whole question turns on this, whether or not there was a dissolution of the former contract? for if there were, the second agreement was made at a time when by law he was disabled from gaining a settlement by hiring and service.* I speak with great diffidence on this case, understanding that the majority of the court are against my opinion. But it strikes me that there was no end of the relation of master and servant, even for a moment, during the whole time the latter continued in the service; and that as the first contract was not dissolved by the subsequent alteration of situation, the pauper gained a settlement in Great Chilton by serving more than a year under a yearly hiring entered into when he was an unmarried man. *Rex v. Alton* (*ante*, 407), warrants this opinion, though that indeed appears to be a more doubtful case than the present; because there, under the second agreement, the pauper was to work by the piece, which seems to imply a liberty either to work or not, as he pleased." *Ashhurst, J.* "At first I was inclined to think that the first contract was not absolutely dissolved, and that the second was merely a continuation and modification of it: but on further consideration, I am of opinion that the first contract was entirely put an end to by the second. This is very distinguishable from *Rex v. Alton*, for there the principal alteration was in the terms of the contract respecting wages, the servant was to be paid by the piece instead of by the year, whereas in this case there was a variation also in other circumstances. Under the first contract the pauper was to live in his master's house as part of his family, and was to receive the yearly wages of 8*l.* Under the new contract the terms were materially altered: the servant was to go into another farm of his master's, he was to receive weekly wages, and was to continue in service for a year from that time. After the second contract, if the master had wished to compel the

servant to return to his own house, and to live in his family at the former wages, the latter might have resisted, on the ground of the second contract, which shows that the former one was abandoned, and that the pauper was not serving under it. Then if the second were a new contract, distinct from the former one, the services under the two cannot be coupled for the purpose of giving the pauper a settlement, because at the time of entering into the second he was married." *Grose, J.* "I agree to the *Alton case*; and here, if the original agreement had continued in force, the pauper would have gained a settlement by serving a year under it. But the question is, whether or not there was a dissolution of the service, and of the first contract? I cannot say that the service under the second contract was a service under the first, because, on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year, to commence at Martinmas; he served under that till May following, when he made another agreement with his master for another year, to commence at that day. Suppose at the end of the first year the servant had said that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second; there is no doubt but that the master might have compelled him to serve until the May following, by virtue of the second agreement. This shows that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the quantum of wages; *I rely most on the alteration of the term of service, which I think is decisive.*" *Lawrence, J.* "It seems to me that in those cases no question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burthen of maintaining him and his family falls on the other; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year; and the service for the last forty days must be performed under a contract of hiring entered into when the pauper was unmarried. Then the question in the present case is, whether or not there was a dissolution of the first contract? and not whether there was a discontinuance of the service; for in *Rex v. St Giles's, Reading*, the pauper continued all the time in the master's service; and there is a difference in this respect, whether the contract be put an end to by flux of time, or by agreement. The only way in which it can be considered that the pauper gained a settlement in Great Chilton, is by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that this is not the fair construction of the second agreement; at the end of the first six months' service, the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole, it appears to me that the second contract was distinct from the former one, and put an end to it, because the second was inconsistent with it; so that the pauper gained no settlement in Great Chilton, because the service for the last forty days was not performed under a yearly hiring entered into when he was unmarried." Both orders quashed.

Rex v. Overnorton, 15 East, 347. Order of removal from Overnorton to Great Rollright, discharged. Case:—On Monday after Michaelmas-day, the 17th of October, 1803, W. Bickerstaffe, the pauper, was hired to serve Jolly of Overnorton, for the year, at 9s. 6d. per week. He served under that hiring, and received the 9s. 6d. every week, either on the Saturday or the Monday following, till the 13th of October, on which day, for the last time, he received 9s. 6d. Three or four days previous to the 13th of October, he

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had a conversation with his master, and agreed to serve him for another year, at 10s. a-week. On the 20th of October, he received 10s., concerning which no explanation took place at the time, but the pauper said in evidence that he received it under the *new* hiring. He continued in the service all that year, and seven weeks after. He was married eight weeks after the first hiring. *Mackanness* contended that the hiring at so much a-week for the year, must mean the current year, *i. e.* 1803. [But the court said, that the justices were to determine what year was meant, and they had considered that it was for the space of a year from the hiring.] He then contended that the first hiring was put an end to on the 13th of October before that year was expired, and then the pauper, being married, could not gain a settlement under the second hiring. *Grose, J.* "Whatever the decisions might originally have been upon the construction of the statute, the rule of law is now inveterate, that if the justices find a hiring for a year, and a continued service for a year, though not under the same hiring, that is decisive to give a settlement." *Le Blanc, J.* "The sessions would have done better not to have found any special case, for strictly speaking it is a question of fact, whether the first contract was intended to be for the space of a year, or only to the end of the current year. But if they thought it was only to enure to the end of the current year, they would have come to a different decision. But however equivocal the expression might have been at first, when the master and servant, on the 13th of October in the following year, spoke of a contract for *another year*, that showed that they had originally intended a yearly hiring. Then there was clearly a continued service of the same description for a year." *Bayley, J.* "The sessions were the proper judges to draw the conclusion as to whether the original contract was dissolved before the end of the year; and I cannot say they have done wrong. There was no reason for dissolving it." Order of sessions confirmed. (a)

The master of a yearly servant, twenty-eight days before the end of the year, gave up his business and discharged the servant, paying him his full wages, and the servant took his wages, left the house, and worked with another person, with the master's knowledge, during the twenty-eight days: Held, a dissolution of the contract.

Rex v. Bray, 3 M. & S. 20. Removal from Bray to Great Marlow, order quashed. Case:—John Butler, the pauper, at Old Michaelmas, 1806, hired himself at yearly wages for a year to Hussey, of Cookham, as a servant in husbandry, and entered upon his service at that time. He lived with Hussey until twenty-eight days before the expiration of the year, at which time Hussey gave up his farming business, sold his stock, and discharged the pauper, and all the other servants in husbandry, paying them their full wages; and he told the pauper and the other servants that they might go where they liked. The pauper accepted his wages, took his clothes and left Hussey's house, and worked with another person, with Hussey's knowledge, during the twenty-eight days. *Rex v. St. Bartholomew*, *Rex v. St. Andrew*, *Holborn*, and *Rex v. St. Mary, Lambeth*, were cited. Lord Ellenborough, C. J. "We take it that the sessions held this to be a dispensation; but then a question occurs, why did they so? What is to be the limit to this doctrine of dispensation if it is to be carried thus far? It should seem as if the master might, at the end of a day, or a fraction of a day, if he has no longer occasion for his servant, send him away, and thereby dispense with the whole year's service. But is not that absurd? Where, indeed, the relation of master and servant continues, but the master foregoes the benefit of actual service for part of the time, that has been held a dispensation; but here is every thing which can be predicated of a dissolution of the contract, for the master paid off and discharged the pauper with the rest of his servants, and the pauper left the house, and engaged himself with another master during the remainder of the year. I cannot but say that I am sorry for some of the cases on this subject, which have created such an artificial system: I think that not only

(a) This case has been confirmed, but the true principle is that there was no dissolution of the first contract, and that the pauper served a year, *i. e.* till the 17th of October, 1804, under the first hiring. *Grose, J.*'s, observation cannot

be supported in reference to this case, for if all the service was not under the same, *i. e.* the first hiring, a service under the second hiring, made when the pauper was married, could not connect with the former service.

the decision of the sessions in this case is unreasonable, but that several of the cases on which it professes to stand are unreasonable also." *Le Blanc, J.* "*Rex v. Bartholomew* was under special circumstances. Here the pauper, after quitting the service of Hussey, worked under a distinct engagement; and though not such an engagement as would gain him a settlement, still it was inconsistent with the continuance of his former contract." *Bayley, J.* "The moment the pauper quitted the service he was to be at full liberty to contract a new relation, and he did so." *Dampier, J.* "The master pays him his wages, and tells him to go whither he liked, and the pauper accepts his wages, and contracts a new relation during the time." Order of sessions quashed.

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Rex v. Mildenhall, 12 *East*, 482. Removal from Wilcot to Mildenhall. Order confirmed. Case:—The pauper, W. Dowling, at Michaelmas, 1803, agreed with J. Stratton, of Wilcot, to serve him for a twelvemonth, at 6s. per week in the winter, and 6s. 6d. in the summer, and a certain allowance besides. He went into the service at Old Michaelmas, and served his master till July, within eleven weeks of the expiration of the year. The pauper not behaving as he ought, his master and he had a dispute, in consequence of which *the pauper asked his master to discharge him*: but he answered he would not unless the pauper would get another man to stand in his stead. The pauper got W. Racey, to whom he agreed to give a guinea and a half out of his own pocket, to take his place, besides his wages, which were to be paid to him by Stratton. By the evidence of the pauper it appeared that when he brought Racey to his master, the master said, "If this man does any otherwise than well, I can send for you, and make you serve your time out;" to which the pauper replied, "Very well." (a) On the contrary, the master stated in evidence that "he did not recollect having said to the pauper that he should expect him to return; and that it was not his intention to have him back; and that they parted on bad terms." The guinea and a half was paid by the pauper to R. at the time he entered the service; and R. also served out the remainder of the year with Stratton, and received the wages from him for that time. The pauper during the remainder of the year hired himself as a day-labourer, and R. continued to serve S. under a new agreement till the end of the year. *Bayley, J.*, asked "If there was any case where the pauper had been held to gain a settlement by hiring and service, where, after leaving his master during part of the year, he actually hired himself to another?" Upon which *Rex v. Goodnestone*, (*ante*, 419), was quoted; and Lord *Ellenborough* then said, "That was an express case of dispensation of service, and the servant might have returned within the year;" and he added, "that there were reasonable grounds here to warrant the conclusion which the sessions had drawn, that this was a dissolution." His lordship also said, (in reply to the argument that the sessions had admitted illegal evidence in receiving the account of the master's intentions,) "what follows is not giving evidence of the master's intentions, but is merely stated by the master in confirmation of his accuracy in not recollecting what the pauper had stated him to have said, as if the master had said, what confirms me in supposing that no such conversation passed, is, that he had no intention to take the pauper back again. The sessions evidently understood the master as contradicting the pauper, and can we say they did wrong? Though it is said that the pauper might have returned at a day's notice, I do not think that varies the case." *Grose, J.* "The pauper, upon a quarrel with his master, applied for his discharge: the master refused, unless upon condition that the pauper procured another person to serve in his stead: and the pauper complied with the condition. And then the sessions, contrasting the master's evidence with the pauper's, have concluded that he was discharged, and the contract dissolved, and we cannot quarrel with that conclusion which it was competent for them to draw." *Le Blanc, J.*

Where a servant, eleven weeks before the end of his year, in order to procure a discharge from his master, engages a man to supply his place, and hires himself to another for the remainder of the year: It was held to be a dissolution.

(a) It would seem that this fact was not credited, and not that it was immaterial; for by *Rex v. Maidstone*, the power to recal the servant seems a criterion of dispensation.

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If a master insist upon turning his servant away, and lay down his wages then due, which the servant takes up and then goes away: it is a dissolution, and the contract cannot be set up again by the servant afterwards returning at the request of his master.

If the servant, nine days before the year is out, goes on a Sunday morning to get another place when his year should be up, and does not return till Tuesday morning, when the master pays him his wages to that time, and will not let him stay out the year, it is a dissolution.

"Unless the court saw clearly that the sessions had concluded wrongly, they would not reverse that conclusion." *Bayley, J.*, concurred. Order confirmed.

Rex v. Gresham, 1 T. R. 101; 2 Bott, 326; 1 Nol. P. L. 417. William Thompson hired himself for a year, at the wages of 3*l.*, to Mr. Cremer, of Beeston Regis; he entered upon his service, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down 15*s.*, which the pauper took up, and went away to his father's house, where he continued for six days, during which time he looked upon himself as a free man: the pauper then returned at the request of his master, and continued in the service to the end of the year, when he received 45*s.*, being the remainder of his wages agreed for at the hiring. By Lord Mansfield, C. J. "The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: the master insists upon turning him away, and pays him down all his wages that were due; the consent on the other side is by taking the money up: then how does he come back again? It is upon the request of the master: there is nothing by which the absence can be explained. The meaning of *purging an absence* is where the act itself is doubtful." See *Rex v. St. Philip in Birmingham*, and *Rex v. Hardhorn with Newton*, ante, 414.

Rex v. Clayhydon, 4 T. R. 100; 2 Bott, 459. The pauper agreed with W. Hodges, in Dunkeswale, for a year, at 2*l.* 15*s.*, and served till nine days before the end of the year, when on a Sunday morning he went away in order to get another place when his year should be up, without mentioning it to his master; he returned on the Tuesday following about six o'clock in the morning, when he asked his master what work he should go about; the master told him he might go and serve the master he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed. He then went away, and did not afterwards return: *he wished to have staid out the year, but his master would not let him.* The sessions quashed the order of removal from Clayhydon, being, it would seem, of opinion, that this was a service in Dunkeswale. Lord Kenyon, C. J. "It is now too late to say that a *constructive service* will not confer a settlement, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year.* *Rex v. Islip*, and *Rex v. Maddington*, (ante, pp. 410 & 413,) which have been relied on, do not govern the present. In the former, the servant did not return until after the expiration of the year, and the facts of that case left the question open, whether or not the relation between the parties subsisted during the whole year? The court there thought that the master improperly refused his consent, and that though the servant was not in the actual discharge of his duty in his master's house, yet as he was liable to be called into his master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that; because, during the continuance of a year a further act was done: when the servant returned after his absence the master not only found fault with him, but refused to take him again into his service; it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer under the control of the master. In *Rex v. Islip* the servant was under the master's control during the whole year: he was liable to be called into the master's service whenever the master thought proper; but here the relation between the master and servant was rescinded

before the end of the year by the act of both parties; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *Rex v. Maddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract: afterwards, indeed, when the master paid the wages, he deducted a part of them; but he could not by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But *Rex v. Gresham* (*ante*, 434), is extremely like the present; there the court held, that by the act of accepting the wages, the servant agreed to put an end to the contract. I am therefore of opinion that there could be no *constructive* service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year." *Grose, J.* "It is clear, that at the time the wages were paid, both parties consented to put an end to the contract, for it is stated no conversation passed at the time; and though the servant may have wished to stay till the end of his year, he did not communicate that wish to his master. The other fact stated, that he accepted a sum short of the whole year's wages, which shows that it was understood by both that he intended to dissolve the contract." Order of sessions quashed.

Rex v. Seagrave, Cald. 247; 2 *Bott*, 321. The pauper was hired from Old Martinmas to Old Martinmas. On September 25th he told his master he was going to be married; his master made no answer; he went on Saturday and was married: upon his return he had no intention of quitting his service; the master said he would not employ him any longer; he said he would go if he would pay him his year's wages; the master refused, and said he would only pay him for the time he had served, and asked him if he would take his wages, or go before a justice? his master set out about his business to his farm, when the pauper called him back, and said he would take the money for the time he had served, and *that he parted with his own consent.*" The court thought that the last words of the case were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

Rex v. Roxby, 5 M. & R. 40; 10 *B. & C.* 51. Order of removal of R. Farmery, &c. from Roxby to Winterton, quashed. Case:—The pauper was hired before Old May day, 1819, (13th of May,) to serve J. B. in Winterton, from the said Old May day to Old May day, 1820, as a servant in husbandry, at 16 pounds wages. He served till the 11th of May, 1820, when, wishing to visit his friends fifteen miles distant, and to attend some statutes on the 12th of May on the way there, and avoid returning back to his master, he requested his master's permission to go altogether: and they settled the pauper's wages, and part was deducted for the time he had to serve. The pauper slept at his master's house, with his permission, on the evening of the 11th of May, and finally left his master's house on the 11th. 1820 was leap-year. The sessions considered this a dissolution of the contract. Lord *Tenterden*. "The question whether this was a dissolution or dispensation was for the sessions, and they have decided it. I should not be disposed to interfere with their judgment, even if I thought it was wrong, which I do not." Order of sessions confirmed. As to the other point in this case, see *ante*, 363.

Rex v. Grantham, 3 T. R. 754. Read, the pauper, was hired a fortnight after Martinmas, 1784, by N. Leadenham, of Allington, for a year, and entered upon his service, and continued about six weeks, when, with his master's leave, he went to assist his father who was ill, where he stayed thirteen weeks, when he returned, in consequence of a warrant obtained against him by his master, into his service under the original contract, and continued therein until Sunday evening, three days before the end of the year, when his master came home in liquor, and abused him, and threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night, and the next morning his master would have had him return to his service, and stay out the year, but *he refused to go again*, and threatened that, unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then

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If a servant consent to quit, and take the wages for the time he had served, it is a dissolution.

Settling wages the day before the year ended, is a dissolution: the pauper by his master's permission slept that night at his house.

If a servant be turned out of doors by his master, and refuse to return, and receive his full wages, and depart, contrary to the express request of his master, it is a dissolution.

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agreed to pay him his full year's wages, deducting for the thirteen weeks he was with his father; which he took, and then left his service, *contrary to the express request of his master*. Lord Kenyon, C. J. "The circumstance stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose there was some fraud intended on the part of the master; but none is stated. It has been rightly said, that an *actual* service is not necessary, for that a *constructive* service is sufficient. But the question here is, Whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or at the end of the year. And it has been argued that this was an absence for a reasonable cause, on account of the ill treatment of the master; but here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill used, though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered him by saying that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day or three days may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus penitentiae*; for both master and servant agreed to put an end to the service." Ashhurst, J. "Though the master at length consented to give the servant his full wages, that was not intended to operate as a dispensation with the remainder of the service, but as a redemption of his credit."

Where upon the master ill treating the servant she requires to be dismissed, and he pays her the year's wages, and tells her she may serve the rest of her time, but she refuses, it is a dissolution.

Rex v. Upwell, 7 T. R. 438. Sarah Brown, the pauper, was hired at Michaelmas for a year, and continued in the service until within fifteen days before the next Michaelmas, when her master kicked and beat her: she complained to her father of this ill treatment, and *required her master to dismiss her* from his service, under a threat of applying to a magistrate for redress; *her master then paid her the whole of her wages*, and told her she might serve the remainder of the year, but she refused so to do, and immediately left the service. When this case was called on the court said there was no question in it, for it must be considered as an agreement by both parties to put an end to the contract several days before the end of the year, and consequently that the pauper had gained no settlement, and that *Rex v. Grantham* (*ante*, 435) was decisive of the present.

Rex v. Corsham, 2 East, 303. Removal from Kington St. Michael to Corsham. Order confirmed. Case:—The pauper's husband was hired by Mr. Dalmer of Corsham, at four guineas per annum, with whom he continued to serve within a fortnight or three weeks of the expiration of the year, when, upon a dispute between him and his master, he, in consequence of his master's kicking him, would not stay, but went to his father's house. In the following week, and before the end of the year, he returned with his father to Dalmer's house, and received the whole of his wages, and 2s. 6d. over for himself: his master asked him to stay, but he refused, and went back to his father's house. Lord Ellenborough, C. J. "The cases of *Rex v. Grantham* (*ante*, 435), and *Rex v. Upwell* (*supra*), have decided this. In both there was a payment by the master of the whole year's wages, and a departure from the service before the end of the year against the will of the master; and in both the court held no settlement was gained. There is nothing material to distinguish this case from those, and it is better to abide by them. It is indeed a question of fact, but of fact mixed with law, and the circumstances are stated that we may draw the proper legal conclusion." Grose, J. "The

payment of the whole year's wages was to prevent an action, and argues no consent to dispense with the service.

Rex v. King's Pion, 4 East, 351. The pauper, Alice Wheale, was hired to Mr. Davies, of King's Pyon, to serve him from Old May day, 1800, to Old May day following. At the end of eight months she had a dispute with her master about some burnt stockings, and he *dismissed her from his service*. She applied to a magistrate; and instances of neglect were stated, but denied; she was desirous of continuing in her service, but her master refused; and the magistrate ordered her master to take her back into his service, *or pay her the whole of her wages*; he refused to take her again, but paid her the whole of her money, but not some wool which he had stipulated to give her as part of her wages, if she behaved well. *After receiving her wages, she offered herself as a servant to several persons*. The sessions thought this was a dispensation. *Per Lord Ellenborough, C. J.* "We are not called upon to say whether the magistrate had or had not a right to discharge the servant from her service; it is enough that he proposed an option to the master to take the servant back or pay her the whole of her wages. The master refused to take her back, but agreed to pay the whole wages, and did pay them; and the servant showed her assent to the dissolution of the contract by taking the wages, and offering her services to other persons. Both parties gave the magistrate a power of dissolving the contract, by showing their assent to what he directed in that respect. Then, after all this, could the master or servant have maintained an action against each other, the one for not performing the remainder of the service, the other for not employing her during that time? This is the true question to be considered. I should not wish to carry the idea of dispensation further than it has already been carried, which seems to me to be stretched as far as ingenuity could go upon the false idea that a servant has a right to acquire in gaining a settlement. I do not mean to disturb any of the cases which have been already decided; but I am not inclined to carry the decisions further still from the plain words of the act of 8 & 9 W. III. c. 30." *Lawrence, J.* "Here is nothing like an abiding in the service for a year." He then referred to Lord Kenyon's judgment in *Rex v. Thistleton* (*ante*, 429), and *Rex v. St. Peter's Mancroft* (*ante*, 424), and added, "If the pauper be absent with the concurrence of the master, it is a dispensation; but if the master cannot resume the right to the pauper's service, it is a dissolution." *Le Blanc, J.* agreed.

Rex v. Maidstone, 12 East, 550. Removal of the wife of G. Langridge, who had deserted her, from Maidstone to Thurnham. Order quashed. Case:—The pauper's husband, at Michaelmas, 1797, hired himself at twelve guineas for a year to S. T., of Thurnham, to serve him as a waggoner, and entered upon his service, and continued in it till October 8, 1798, on which day he was married to the pauper, *and his master consented to his leaving the service*, and paid him his wages. Nothing was subtracted on account of his leaving his master on the 8th of October. On the 9th of October he hired himself to and went into the service of one Stone. Michaelmas day fell on the 10th of October in the years 1797 and 1798. Lord Ellenborough, during the argument, said, "The case states that the master consented to the servant *leaving his service*; then upon that statement can we say there is a dispensation?" He afterwards added, "this is clearly a case of *dissolution*; and that he would not extend the doctrine of dispensation any further than it had already gone." That here "*the master consented to his servant's leaving his service*," and that there could not be a stronger plea than this by the servant in an action against him by his master for deserting his service." Then he said, "though the opinion of parties is not to be pressed, yet their acts are material, upon the question of dispensation or dissolution." And "here it is stated that after L. had left his first master's service on the 8th, he went on the following day, and which was the day before Michaelmas day, and hired himself into the service of a new master. Here then is an express renunciation on the part of the master of his rights over the servant two days before the end of the year; and the servant's assent to this is signified by his departure from the service, and contracting the next day an obligation to

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A master refused to take his servant back, and the servant took her wages, and offering herself to others as a servant, it was held a dissolution.

Master consents to servant's leaving his service one day before the end of his year, pays him his full wages, and the servant takes another place: Held, a dissolution.

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another master, into whose service he entered immediately, subject to all the rights of the new master over his service. How then can I say, in the words of the statute of W., that there was a continuing and abiding by the servant *in the same service during the space of one whole year*, when it appears that that period of service was abridged by the last two days of the year?" *Grose, J.* agreed. *Le Blanc, J.* "I think the sessions would have been well grounded in finding as a fact, that this was a dispensation of the service on the part of the master, and not a dissolution of the contract; for, according to the cases, it is always a question for the sessions to decide, whether the consent of the master to the servant's leaving his service a few days before the end of the year, for a particular purpose, but paying him his whole year's wages, be a dispensation of the service for the remainder of the year, or a dissolution of the contract? Here the servant wanted to marry, and one entire day before the end of the year the master gave him leave to marry and go away from his service. It was a fair and reasonable conclusion to draw, that if the servant wished to go away one day before the end of his service for the purpose of marrying, the master would have no objection to dispense with his service, and give him a holiday for one day; for the service would have ended on the 9th. But the sessions not choosing to draw this conclusion themselves, which I think they might have done, send the case to us upon the dry facts stated, and have not found that the master did consent to give his servant a holiday, and to dispense with his service for the remaining day of the year, but merely state as a fact, that the master consented to his *leaving his service*. Under these circumstances I cannot say that the sessions have done wrong, though I think they might have drawn a different conclusion." *Bayley, J.* said, "The sessions had done right. In order to constitute a case of dispensation, I think the master should have power to recal the servant to his service all through the year; but where the master agrees generally to let the servant go away from his service, without reserving to himself the right of recalling him throughout the whole year, I think that puts an end to the contract of service altogether."

The master insisting upon it, the servant left his master's house, and afterwards asks a magistrate's order to be received again, or paid his whole wages, and afterwards enters another service, it is a dissolution.

Rex v. Leigh, 7 East, 539. John Brazier hired himself on the 31st March, 1795, as a servant in husbandry for a year to S. Jones, of Lulsley, for 6*l.* 10*s.* He resided at L. in J.'s service till March 25th, 1796, upon which day, by his master's leave, he went to the mop, a meeting for hiring servants, to seek a new service for the ensuing year. He returned to his master's at three o'clock in the morning of the 26th of March, with some ribbons in his hat. In the course of that morning *his master* came to him and observed, "He supposed masters were scarce at the mop, and that he had enlisted for a soldier, and *told the pauper he should stop no longer in his service.*" The pauper told his master he had not enlisted (which was the fact), and that he wished to stop his year out. But the master said he would not keep the pauper any longer in his service, and at the same time offered the pauper something less than 6*l.* 10*s.* as wages, which he refused to accept. The pauper said he would have accepted the full year's wages if then tendered to him by his master, but that he had rather have staid out his year. *The pauper left his master's house immediately in consequence, and never returned to it.* On the 27th of March, a summons having been taken out by the pauper, he and his master appeared before a justice, and the pauper applied to him to direct his master either to receive him into his service for the remainder of the year, or to pay him his whole year's wages; the magistrate verbally directed 2*s.* 6*d.* to be deducted from the year's wages and retained by the master. On the same day the *pauper hired himself to and went into the service of a Mr. Smith.* About a week after he went to Jones for his wages, who paid the full sum of 6*l.* 10*s.* Jones some days after applied for a return of the half-crown directed by the magistrate to be deducted, but it was never returned to him. *Lord Ellenborough, C. J.* "How can there be said to have been a constant refusal of the servant to put an end to the contract, when he actually entered into another service before the time when his first contract would have expired. That is an insuperable difficulty. His not receiving his wages before the year was out

did not vary the case, for he would have received them at any time, if offered. *Rex v. Pyon* (*ante*, 437), is almost in terms the same." *Le Blanc*, J. added, "If there was any fraud the magistrate must have been party to it."

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Discharge by a justice.

Rex v. North Basham, 2 *Bott*, 323; *Cald.* 566; 1 *Nol. P. L.* 412, 413, 431. The pauper, in order to avoid a settlement in East Basham, having three days and a half before the end of the year married a female servant big with child by him, went with his master before a justice, to be by him discharged from his service. The master was willing that the pauper should be settled in his parish, and said so before the justice; and the justice, after hearing both parties, discharged the pauper from his service. The master paid him his wages, all but for the three days and a half. And Lord Mansfield, C. J. said, "This was a discharge before a justice, and it certainly was not fraudulent on the part of the master, for he had no objection to the settlement. It was a solemn discharge by the consent of both parties, and as such, a dissolution."

A female servant may be discharged by her master for being pregnant, and thereby loses her settlement.

Rex v. Brampton, *Cald.* 11; 2 *Bott*, 444; 1 *Nol. P. L.* 385, 435. Hannah Wright was removed from Ashover to Brampton. Order confirmed. Case:—The pauper hired herself to Mr. Langsdon for a year, and served till within three weeks of the end of the year, when her master discovering her to be with child, turned her away, and paid her her year's wages, and half-a-crown over; whereupon she went to her father's at Ashover, from whence she was removed; she was willing to have staid her year out if she might; but that it was not material to her, as she had received her whole year's wages, and not being half gone with child, she hoped she could have done her work to the end of the year. The case having been argued, Lord Mansfield, C. J. said, "The 8 & 9 W. III. c. 30, is an explanatory law, and must not be carried beyond the words by construction. It declares that there must be a hiring for a year, and a continuance for a year in that service to gain a settlement. With respect to the hiring in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as, whether the absence was *with leave*, from *sickness*, &c.? But these questions have always been brought to this point, *whether the contract was put an end to within the year?* This cannot be done by dismissal of the servant without good and sufficient cause. In *Rex v. Castlechurch* (*ante*, 424), there was a discontinuance by agreement, and the contract therefore determined; in such case the payment of the full wages, which might be mere benevolence, could make no difference. The question then is, *is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong*. The marginal note cited from 18 *Vin. Abr.* 459, whatever degree of authority it may be entitled to, is well warranted in principle. If the master agrees to the contract's going on, the overseers, it is true, shall not take her away because she is with child; but shall the master therefore be bound to keep her in his house? To do so would be *contra bonos mores*; and, in a family where there are young persons, both scandalous and dangerous. Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shows the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismissal of his servant under a *criminal* charge, shall never be done away by an implication arising from the payment of the whole wages." Willes, J. "This case differs from *Rex v. Richmond* (*ante*, 418), nor is it like *Rex v. Islip* (*ante*, 410), where the cause of the discharge was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate; the jurisdiction of the justices being confined to cases in *husbandry*." Ashhurst, J. Same opinion. Orders affirmed. *Rex v. Marlborough*, 2 *Bott*, 423, is to the same effect.

In *Rex v. Welford*, 2 *Bott*, 446; 1 *Nol. P. L.* 439; where the like deci-

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Where a servant was apprehended on a charge of bastardy, and detained some days from his service: It was held that he did not gain a settlement.

sion was made, it is added that the pauper, a man-servant, could not be discharged from his service, on account of a *supposed* criminal intimacy with a female servant in the same family. *Secus*, if the criminality had really existed. See tit. "*Servants*," Vol. V.

Rex v. Westmeon, *Cald.* 129; 2 *Bott*, 447; 1 *Nol. P. L.* 440. Robert White was hired on 11th October, 1779, to John Gibbs, for a year; he entered on the same day, and continued in his service till the 6th October following, when he was apprehended by a warrant, being charged with being the father of a bastard child, then six months old: he was carried to an inn, and kept in custody by the parish officers till the 10th October; his master, on 6th October, settled with him at the inn, saying, that he might not see him again, and deducted 1s. out of his wages, on account of his not serving the whole year; "though he said he had no objection to the pauper's gaining a settlement, yet perhaps the other farmers might:" he did not in any other manner assent to or dissent from the pauper's absence: nor did the pauper, *after his being so taken, return to his said service.* Lord Mansfield, C. J. "It is not necessary to enter into the question how far this is a crime, because the master has not discharged the pauper upon that ground: that it is wrong and an offence no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law, is not material here: to be sure, it was not punishable as a crime at common law; and the statutes seem only to go to the punishment of the parents for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence: it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year, for there was none: it was against the intention of both parties that it should affect the settlement; and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated; there was no fraud intended, because there was no agreement; nor did the master either mean to prevent or promote the settlement; but he deducts a something to leave that question open, which it was the object of other persons who were interested to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service, and it is by means of his own act that he becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement: it is well put, that had an action been brought for his wages, he could not have recovered for these four days."

Rex v. North Cray, 2 *Bott*, 450; *Cald.* 562; 4 *Doug.* 243. The pauper, who was absent nine days before the expiration of his service under a yearly hiring, was charged on oath with being the father of a bastard child not then actually born: he was apprehended by warrant, and committed for want of security, October 11th; the last day of his year he gave a bond of indemnity to North Cray; his master during all this time was one of the overseers; the pauper was discharged from prison by an order of magistracy, and the master paid him all his wages, except for the time of his imprisonment. Lord Mansfield said, "There was no evidence of the master's consent." And by the court, "There is no actual service, and the pauper was absent through his own criminal act." (See remarks by Taunton, J. in *Rex v. Coningsby*, *ante*, 420.)

The servant, to avoid an order of bastardy, absconds with his master's privity. In nine days he returns and agrees to work with his master again, and at the end of the year

Rex v. East Kennett, 2 *Bott*, 451; *Cald.* 562; 1 *Nol. P. L.* 443. The pauper was serving under a yearly hiring from Michaelmas, at 7*l.*, and hearing in May following that there was a warrant out against him for getting a bastard child, told his master he must be off, and asked him for money to go off with; his master gave him three guineas and a half; he ran away, leaving some clothes and his threshing tackle; two or three days after, he was taken up, and obliged to marry the woman. After nine days' absence he

returned to his master's house for his clothes, &c.: the master said to him, "Where are you going?" The pauper answered, "I do not know;" upon which the master said, "You may as well work for me again as any other." The pauper agreed, and continued to work there without any fresh agreement, and at the expiration received, including the 3*l.* 13*s.* 6*d.* his 7*l.* wages, all but half-a-crown, which the master deducted for his absence. The pauper, when he ran away, never thought of going back to him, but considered himself discharged. Lord Mansfield, C. J., adverting to the concluding part of the case, said, "It showed the fact, though it did not alter the law. The servant desires to be off. How off? His service. He received his wages, and if not the whole, it was on account. He goes back, not on the old contract, but for his clothes, and a new agreement takes place. No settlement was gained."

In *Rex v. Kenilworth*, 2 T. R. 598, Buller, J., said, "The circumstance of the pauper's having been apprehended on a charge of bastardy, I lay out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased."

Rex v. Preston, Burr. S. C. 69. A person served under a hiring his whole year within five days, and then left his master by consent, the parish officers having first given him two guineas to leave the parish, he being about to be married. The justice held this to be no settlement, and stated the case specially. It was objected that this departure was fraudulent. But by the Court: "The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would, without question, have stated it to have been so; that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year. But they decided the case upon a defect in the order."

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receives the balance of the whole wages, minus 2*s.* 6*d.* for the absence. No settlement was gained thereby.

If fraud be not found by the sessions, the Court will not act upon such an imputation.

3. THE PLACE IN WHICH THE SETTLEMENT IS ACQUIRED. (a)

Although the law requires a hiring for a year, and a service for a year, yet a residence for forty days in any particular parish or place, during such hiring and service, will complete the settlement. But as a servant may during a hiring and service for a year reside forty days in several different parishes, it is held that the settlement will be in that parish where he last completes a forty days' residence.

However, less than forty days' residence in a parish will not gain a settlement, as was held in *Goring v. Moltsworth*, Sess. Ca. 327; *Sett. & Rem.* 219; 1 *Barnard*. 436; 1 *Nol. P. L.* 423; where a person hired for a year, and who served the year with a master living at Goring, and who kept a boat, which navigated from Goring to London, but the servant was not forty days in the whole year at Goring, but served out the year on board the boat. By the Court: "This was no settlement at Goring."

It is not necessary that the forty days should be continuous; *Greenwich v. Longdon*, Burr. S. C. 243; 2 *Bott*, 398. George Wall was hired and served for a year as a livery servant to Saunderson, commander of a yacht, who had a house and family at Greenwich, and resided there when not on the king's service. His master made frequent voyages to Holland, and he always attended him, and he was never forty days together at Greenwich, but during his service he was there forty days at different times. By the Court: "It need not be forty days altogether; it is sufficient if within the year he reside forty days in the whole."

Rex v. Denham, 1 M. & Sel. 221. Order confirmed by the sessions for the removal of Charles Tranter. Lord Ellenborough, C. J. delivered the judgment. "The question was, whether it was necessary there should be forty days' residence within the compass of a year, or whether, if the service were for several years uninterruptedly, a residence of forty days within those several years would be sufficient? The facts were these; the pauper was

3. The place in which the settlement is acquired.

Forty days' residence necessary to a settlement.

They need not be altogether.

But must be within the compass of a single year.

(a) See division of this subject, ante, 331.

3. *The Place
in which
Settlement is
acquired.*

hired for a year to Smith, and served that year; at the expiration of which he was hired to him for another year, and served half of it; and during that year and a half he was resident in B. for forty days, but he did not reside in B. for forty days either within the first year or within the half year, nor (as was admitted) within any one period of a year whilst he continued with Smith. The sessions were of opinion, that this residence was not sufficient, and we think their opinion right. By 13 & 14 Car. II. c. 12, s. 1, poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within forty days after they so come to settle as aforesaid; and it is under this act that forty days' residence is required. By 1 Jas. II. c. 17, s. 3, the forty days' continuance shall be accounted from the delivery of notice in writing to one of the officers of the parish to which such poor person removes: which notice, by 3 & 4 W. & M. c. 11, s. 3, is to be read in church the next Lord's day, and registered in the book kept for the poor's accounts. By the same statute if any unmarried person, not having child or children, shall be lawfully 'hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published as aforesaid.' And by 8 & 9 Will. III. c. 30, s. 4, 'No person so hired as aforesaid shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of *one whole year*.' Upon these clauses settlements by hiring and service now stand. It has been decided that so as there is a hiring for a year, and service for a year, it is not necessary the whole of the service shall be under the yearly hiring, but service not under a yearly hiring may be connected with service under a yearly hiring, and both services if uninterrupted may be taken into the account: but it has never been decided that residences beyond the compass of a year can be connected; and as the legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period, we think we abide most closely by the words, and give effect to the most probable intention of the legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for twenty years, and the servant to sleep twice in every of such twenty years at the same inn in travelling, and to be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? And yet there his settlement would be, if we were to hold that residence for forty days beyond the compass of a single year would do."

The forty days' residence need not be under the same year's hiring.

Rex v. Findon, 4 B. & C. 91; 6 D. & R. 116; 3 D. & R. Mag. Ca. 144. William Steff was removed from Bedgrave to Findon. Order confirmed. Case:—The pauper continued in Mr. Ventris's service, under successive yearly hirings, from the 2nd November, 1807, until the 2nd November, 1811, when the pauper was again hired by Ventris for another year. The pauper served his master at St. Peter's in the East, Oxford, from the 2nd November, 1811, until the 14th April, 1812. He then accompanied him to several places until the 2nd November, 1812, when he was again hired by Ventris for another year, and he travelled about with his master until the 20th December, 1812, on which day they arrived at Findon (the appellant parish) where they continued more than forty days, and afterwards he accompanied his master to St. Peter's in the East, where they continued up to 2nd April, 1813, a space of thirty-eight days, and on the 2nd April, 1813, left Oxford for Beeding, where they continued until the 2nd May following, thirty days, when they parted by mutual consent. *Abbott, C. J.* "The settlement of the pauper is clearly at Oxford: he was undoubtedly settled there on the second April, 1813, having resided there more than forty days within the last year of his service, and gained no subsequent settlement. It is not necessary that the whole of the residence should be under the last year's

hiring." *Bayley, J.* "I think this point was in effect decided in *Rex v. Denham* and *Rex v. Hamboro'*, which was before the court in 1819. It has never been decided that the forty days' residence must be under the last year's hiring. In *Rex v. Apethorpe* (*ante*, 402), it was held that part of the residence must be under a contract of yearly hiring."

Rex v. Child Okeford, 3 Bar. & Ad. 809. E. Miller was removed from Child Okeford to Marnhull. Order quashed. Case:—On the 17th April, 1825, the pauper was hired to serve Mr. J. Rossiter, in Child Okeford, as a servant in husbandry, at five guineas a year. He served him under that agreement till the 11th of April 1826, when the pauper made a fresh agreement with his master, at 5s. a week as an out-door servant, and served him under this second agreement for upwards of two months. The service was never discontinued nor was the nature of it changed except as to the pauper becoming an out-door servant from the 11th April, 1826. The pauper resided from the 17th April, 1825, till the 3rd May following, in the parish of Child Okeford. On the 3rd May, 1825, he accompanied his master to and resided in that of Marnhull, till the 6th April, 1826, when he returned with his master to Child Okeford, and resided there during the remainder of his service, under the first agreement from the 6th to the 11th April, and under the second agreement upwards of two months. Lord *Tenterden*, C. J. "The authorities establish, that in order to gain a settlement by hiring and service, some part of the forty days' residence must be while the party is serving under a yearly contract. It is now sought to add another term to that, namely, that the whole forty days' residence shall be within a year from the time of the yearly hiring. *Rex v. Denham* (1 M. & S. 221; *ante*, 441), does not go so far. Nothing was said in that case as to the time when the computation of the year was to commence. Lord *Ellenborough* there dwells upon the inconvenience which would result from picking out a few days' service in several years, and thus extending the inquiry in a case of settlement through an unreasonable period of time, but all that is decided there is, that to give a settlement by hiring and service, there should be forty days' residence within the compass of one year. It is not said that that year is to be computed from the time of making the yearly contract. There is no ground for holding that it must be so reckoned." *Littledale, J.* "It is sufficient if the forty days' residence be within the compass of a year, it need not be within one year from the yearly hiring." *Parke, J.* having been present only during a part of the argument declined giving any opinion. *Taunton, J.* concurred. Order of sessions confirmed.

3. The Place in which Settlement is acquired.

If the forty days' residence are within the compass of a year they need not be within one year from the yearly hiring.

If the last forty days' service be in different parishes, the settlement is where the servant lodges the last night. As to the meaning of this word, see *Rex v. Ringwood*, *post*.

Lowess v. Lanstephan, Burr. S. C. 825; 2 Bott, 404. The pauper was hired for a year to John Williams, of Lanstephan, where his master occupied his own estate. He continued with his master in Lanstephan till some time before St. Peter's Tide, when his master and family removed to Lowess, in which parish his master rented another farm. He continued with his master in Lowess till the 16th of January following, when his master and family removed to Lanstephan, and his master afterwards constantly resided there. But the pauper was sent back by his master to Lowess to thrash the corn and look after his master's cattle. The pauper staid in Lowess two or three nights and days, and ate and lodged there; and then returned again to Lanstephan in like manner as aforesaid; and so continued between the parishes to the end of his year, which was the 17th May following. The pauper never continued forty days together in either of the two parishes after the said 16th January, but lived and resided as aforesaid more than forty days in the whole in each. He believed he resided most at the latter part of his service in Lanstephan, and lodged there the last night; and went from thence in the morning to Lowess, and took some cattle of his master's from thence to the Hay-fair, where he finished his service. The court held him to be legally settled in Lanstephan.

Rex v. Hulland, Doug. 657; Cald. 118; 2 Bott, 288. A person who has resided part of the year in one parish, and part in another, at different times and intervals, making when added together more than forty days in each, is settled in the parish where he lodged the last night.

Rex v. Iveston, Cald. 288; 2 Bott, 407. The pauper was hired for a year

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If a yearly servant serve forty days in A., then go with his master's leave to B., his father's parish, and there remain above forty days, then go to another parish to work for his master, and then for the three last days sleep in B., his father's parish, he gains a settlement in B.

A settlement may be gained by service in a parish where the master never lives.

The settlement is at the place of the last forty days' service, though the master is not settled there.

So a person hired as a groom to running horses,

to serve as a collier: he resided at Kyo from Martinmas, when he was so hired till the May-day following, when he married; about fourteen days after his marriage, he took a cottage in Iveston, and without the privity of his master, removed thither from Kyo with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service, and then they returned to Kyo. The court thought this case similar in principle to *Rex v. Hulland* (*ante*, 444), and precisely to that of Lowess, and that they ought to be adhered to; and the settlement was therefore in Kyo.

In *Rex v. Great Bookham*, *Cald.* 290; 2 *Bott*, 407, *n.*, the same point was considered as fully settled.

Rex v. Undermilbeck, 5 *T. R.* 387. Removal from Undermilbeck to Dalton. John Dixon, late husband of the pauper, was hired for a year, and entered upon his service in the beginning of April, 1783, and continued with his master till December following, when his master, having little to do in the winter season, gave him leave of absence for six weeks to work for himself wherever he pleased, allowing 15s. out of his yearly wages. Dixon then went to his father's house in Sawrey, and continued there seven weeks, being one week longer than he had leave for. About that time his master contracted with one Braithwaite, that he and his servant Dixon would assist Braithwaite in making some fence walls in Pennington, where Dixon continued working with his master above forty days, the same being till within about three or four days of the end of the term, when he went away again to his father's house in Sawrey, with his master's consent; and whilst he so continued in Sawrey, the year's service with Bowness expired. During the time that Dixon worked in Pennington he slept at Dalton, but never worked a day's work in Dalton. When Dixon went the last time to his father's house in Sawrey it was on the Saturday, and his year's service would not have expired till the Tuesday following. On the Monday morning he went to make up some fence-wall on his father's account in Sawrey, but was taken ill that afternoon, and continued out of health for some weeks afterwards. Dixon afterwards went to his master, who paid him his wages, deducting 15s. for the six weeks' absence, and 2s 6d. for the other week he was absent more than agreed for. It was argued that the residence in Sawrey for the last three days could not be connected with the former service in that place, because *Dixon did not serve there at all during those three days*, therefore the last forty days' service was in Dalton. Lord *Kenyon*, C. J. "It has been properly admitted that the contract was not dissolved by the servant's absence for seven weeks, because the master consented to it, and received part of the servant's earnings; and as the service continued in contemplation of law during the whole year, I think the servant was settled in Sawrey, where he slept the last night, he having before that time served there forty days in the course of the last year. For it has been decided, after much argument, that the last day's service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for forty days."

St. Peter's in Oxford v. Chipping Wycomb, 1 *Stra.* 528; *Fol.* 200; 2 *Bott*, 275. The master of the Oxford stage-coach hired a servant for a year, to stay in an inn at Wycomb where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in Oxford. The question was, where that servant gains a settlement, or whether any by that service? And by the whole Court: "He gained a settlement in Chipping Wycomb, though his master never lived there."

Bishop's Hatfield v. St. Peter's, St. Albans, *Fol.* 197; 2 *Stra.* 794. Langley was huntsman to Mr. Arnold, who lived sometimes in Westminster and sometimes in Northamptonshire, but Arnold had no settlement in St. Peter's; Langley served the last forty days of his year in St. Peter's with Arnold. The Court of King's Bench held Langley's settlement to be in St. Peter's, by serving Arnold the last forty days of his year there, though Arnold had no settlement there.

Rex v. East Ilsley, *Burr. S. C.* 722; 2 *Bott*, 402. The pauper was hired for a year, and so for two years afterwards, successively, to the Earl of Port-

more, to look after his running horses; and during the three years removed from place to place with the horses, the last ten months of which time he resided with the horses at East Ilsley, which was a public place for exercising and training running horses; the earl had no house in East Ilsley, nor any estate there. The question was, whether a groom, residing at a public place, where his master had no house or estate, merely for the purpose of training running horses, should gain a settlement at that public place? And the Court were unanimous that this was a good settlement.

Rex v. Bath Easton, Burr. S. C. 774; 2 Bott, 403. Thomas King, the pauper, was hired as a covenant-servant for a year to Mr. Robinson, who then resided at his house at Bath Easton, as his only place of general residence. He entered upon the service, and served the year and some months. He served the first part of the year at Bath Easton, but about the latter end of April, 1764, he attended Robinson with the rest of his family to Exmouth, where Robinson went for sea-bathing. Robinson hired by the week, at fourteen or fifteen shillings by the week, the whole of a small lodging-house at Exmouth, which belonged to an innkeeper, who kept it ready furnished solely for the purpose of letting it to strangers; in which he stayed for the space of ten weeks; during the whole of which time the pauper served him there. Robinson then hired by the week lodgings in another house in Exmouth, being obliged to quit the former on account of its being engaged to a lady and her niece from London, who came to Exmouth for the same purpose of sea-bathing. He stayed at the last-mentioned lodgings, and the pauper with him, for the space of two months, except an absence of about three weeks on an excursion into Kent, where the pauper attended him; after which he returned to Exmouth, and the pauper with him, who continued in his service at Exmouth till his master discharged him, just before his leaving that place, and returning to his residence at Bath Easton, which was when he gave up the lodgings last-mentioned, at the expiration of the said space of two months. Exmouth is a place generally resorted to by persons from Exeter and London for sea-bathing: but merchants also resort to it from Exeter as to a village. Lord Mansfield, C. J. "This was a common hiring for a year: there is nothing particular in it. And in the case of a common hiring for a year, a service with the master gains a settlement to the servant in the place where the last forty days of such service were performed. Here the service with the master for the last forty days ended at Exmouth. There was no continuance of service with the master after the master's return to Bath Easton. In *Alton v. Elvetham* (*post*, 446, n. (a)), there were many particular circumstances; the servant was born at Elvetham under a certificate from Alton, and could not gain a settlement there by his original hiring and service in that place; nor without a discontinuance of it, and a new subsequent hiring. But no discontinuance ever happened in that case; the service did not end at Scarborough, it continued. The servant at Scarborough proposed a new agreement for another year; his master said, it would be time enough when they returned home to Elvetham; whereupon the servant continued on for about six weeks until they returned to Elvetham, when he was again hired by his master for a third year, and served it out at Elvetham, and continued in his master's service for seven years more in Elvetham. So that it was a continuation of the original hiring; the contract did not end at Scarborough. The question, therefore, in that case was, whether serving his master, who resided at Scarborough as a sojourner, for about forty days, should gain the servant a settlement there, when his former hiring at Elvetham was not discontinued nor ended at Scarborough, but, on the contrary, continued and went on until and after their return to the master's general residence at Elvetham; but that case does not lay it down generally, that no servant can gain settlements at places where people go to drink waters, though they serve their masters or mistresses there for forty days; if it does, it is wrong; for no such general rule ought to be laid down. We are all of opinion that this servant who went with his master to this place, and served him there for the last forty days of his service, which ended at this place, and was not at all continued at any further time or place, is legally settled there by serving the

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and going from place to place to take care of them, will gain a settlement by residence at the last place, though his master had neither house nor estate there.

Residence of a yearly servant with his master at a sea bathing place for forty days confers a settlement.

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last forty days at it."—*Willes, J.* strongly declared his assent to this opinion; and added, "that he hoped it would be understood, that serving a master forty days at a public place gains a servant a settlement at that public place." (a) *Rex v. St. Peter's in Oxford, Sett. & Rem.* 139; *Fol.* 193; 1 *Str.*

(a) The judgment in the case of *Alton v. Elvetham, Bott*, 400, which may be considered as over-ruled by the above case, so far as it supported the doctrine as to a distinction between residence at a watering place and any other place, is as follows. Lord *Mansfield, C. J.* "This was an order made for the removal of the wife of the pauper from Elvetham to Alton. The sessions state these facts: Alton, in 1722, gave a certificate to the father of the pauper to Elvetham; under which the father went to Elvetham, and has dwelt there ever since; the pauper and other children were born there. The pauper, on the 29th of August, 1734, was hired for a year as a covenant-servant by Sir Henry Calthorpe, at Elvetham, and served that year out in that parish; that at the expiration of this year, he was hired again as a covenant-servant by him for another year, and served that year; but it happened that the last forty days of the second year were at Scarborough in Yorkshire; that he did not, at the end of the year, quit the service, but on the 29th of August, 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to Elvetham; whereupon he continued for about six weeks with his master at Scarborough, when they returned home to Elvetham; then he was hired for a third year, and served that year out at Elvetham, and continued in his service for seven years more, and his wages were advanced every year; and afterwards he quitted that service, and married, and had four children, mentioned in the order. The justices considered him serving altogether in Elvetham, and that he could not gain a settlement there. It has been contended that they were in the wrong, for he ought to be considered as having gained a settlement at Elvetham, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate person will not gain a settlement; therefore it is indirectly contended for that he had gained a settlement. His master goes (probably for his health) to Scarborough, and happens to stay there forty days; and it is contended that the servant then gained a settlement at Scarborough, which discharged the certificate, and that he afterwards gained a settlement at Elvetham. The general question is, whether this accidental service of

forty days at Scarborough acquired a settlement to the servant? It is immaterial whether the master has or has not a settlement in the place where the service is, because that will not prevent the servant gaining a settlement; but the objection here is, whether the forty days at Scarborough are to be considered barely as a continuation of the service at Elvetham or a new *bond fide* service at Scarborough? There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to Bath, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: substantially, the master lived at Elvetham; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from Alton. Sir Henry happens to go to Scarborough, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays forty days at a place, shall that be a settlement? Suppose he stays forty days with his master in a sea-port, being wind bound, would that gain a settlement? The master's abode here is at Elvetham, which I lay great stress on. The domicile (as the civilians call it) of Sir Henry was not at Scarborough. I shall next consider the authorities cited, the principal of which was *Rex v. St. Peter's in Oxford*, 1 *Str.* 524. The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court will, in such case, over-rule it.

524; is to the same effect, and will be found in its most correct form in the judgment of Lord Mansfield in *Alton v. Elvetham*, *infra*, note.

Rex v. St. Andrew's, Holborn, 2 Bott, 408. The pauper, William More, was removed from St. Andrew's, Holborn, to Aston-juxta-Bridworth. Order quashed. Case:—The pauper, about 1760, became a yearly hired servant to Mr. Squire, an attorney in Furnival's Inn, London, with whom he lived about eight years. The usual place of Mr. Squire's residence was Furnival's Inn, but he used frequently to go to Bath for his health, when the pauper always accompanied him. His stay on those occasions was sometimes four or five months together. He was always in lodgings there, and generally on the South Parade, in the parish of St. James's in Bath. During the three

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A hiring may be in an extra-parochial place, and a settlement may be gained by a service under it in a parish or township; and if the master and

But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to show that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange*, where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extra-parochial place would gain a settlement. And so *Powell, J.*, somewhere said, that if a servant were hired for a year in Ireland, and the service were performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated that the pauper was hired for a year into Christchurch, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to Fawley-court. Now her mistress being a single woman, could not possibly have any abode in Christchurch but as a visitor or friend. And it is further said, that the only doubt was, whether the settlement gained at Christchurch was superseded or not? That could not possibly be so. For she could by no means gain a settlement in Christchurch, which was not only an extra-parochial place, but a single house only, having been once a monastery, being in the nature of one of the king's palaces, which may be extra-parochial. I mention this, to show the incorrectness of cases, which cannot be relied on. This case is also in *Foley*, 215, and *Cases of Settl.* 139, reported differently. But all of them together may serve to help us to the truth, and which, upon inquiry, I find to be this: Mrs. Cook, the mistress of the servant, had two daughters; one married to Dr. Clavering, dean of Christchurch, the other to Mr. Freeman, who lived at Fawley-court; and as she lived alternately with these two gentlemen, her sons-in-law, and was as much at Fawley-court as at Christchurch, and (as I ob-

served before) it was not possible the servant should be settled at Christchurch, because it was an extra-parochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield v. St. Peter's in St. Alban's*, (*Foley*, 197,) where a huntsman was hired by one Mr. Arnold, who lived sometimes in Westminster, and sometimes at Northampton, and the servants resided, where the hounds were kept, at St. Alban's; and the only question was, whether the servant could acquire a settlement there by such service, as his master had none? and there was no doubt but he could, for he came exactly within the case of a stage-coachman, who was hired to serve at Wycomb, though the master lived at Oxford; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, whether there was a continuance of service with the master in Westminster or Northampton, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament, and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of London. However, there is no precision in the case, on which the court can rely; and upon the whole, I think it not at all inconsistent with our present resolution, which is, that in the present case the whole of the service was only a continuation of the service at Elvetham. However, I would have it observed in the present case, that I lay great stress on both the master and servant considering Elvetham as their home, as also upon the precedent and subsequent service, and upon the circumstance of the certificate. There was another objection at bar, but not relied on: that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he be living, they must remove him after to his family." And both the orders were confirmed.

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servant be at a watering place during the last forty days, a settlement will be gained there.

Service with the same master, but not in the same place where the hiring was, will gain a settlement in the last place.

It is not necessary that the servant should lodge at his master's house.

Where a person, during his service, marries, and then lodges with his wife for the last forty days in another parish than that where his service is performed, he nevertheless gains a settlement in the parish where he lodges. And this, though it was unknown to the master where he lodged.

It is not necessary that the residence should have relation to the duties of the servant.

last years, Squire resided rather more at Bath than at Furnival's Inn; and the last time the pauper was at Bath with him, Squire stayed several months in his lodging on the South Parade. The pauper quitted Squire's service in May, 1766, having resided about four months previous thereto in Furnival's Inn: Furnival's Inn is an extra-parochial place. It was afterwards added, that Furnival's Inn was no township or vill within the meaning of stat. 13 & 14 Car. II. c. 12, and that no removal had ever been made to it. Lord Mansfield, C. J. "It now appears that Furnival's Inn is not a vill within stat. 13 & 14 Car. II. c. 12. The hiring there lays the foundation for a settlement, but none can be gained there. You must look back to the last place except Furnival's Inn, where forty days were served; that place is Bath; and it being now settled that settlements may be gained at watering places, the settlement was gained there, notwithstanding the *Scarborough case*," (*ante*, 446, n. (a)).

Rex v. Ashton, Fol. 88; *Sett. & Rem.* 23; 2 *Bott*, 388. A servant was hired for a year in Ashton, where she served half a year; then her master, and she with him, removed to Patshall, where her master took another farm; the servant continued with him in Patshall for the other half year. By the court: "Here is what the act requires, a hiring for a year, and service for a year; for it is the same service, and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another, and serves him for one whole year, the parish he continues last in for forty days before the end of his year is the place of his settlement; and the reason why the forty days gain a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued with him forty days unremovable, he gains a settlement."

Rex v. Whitechapel, 2 *Sess. Ca.* 114; Fol. 146; 2 *Bott*, 393. A person was hired for five years to work at a glass-house in Whitechapel, at the rate of 10s. a week; but never lodged with his master in the house at any part of the time, but at another house in the parish. By the court: "He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish."

Rex v. Hedsor, *Cald.* 51; 2 *Bott*, 405. Removal from Little Marlow to Hedsor. The pauper was hired for a year to Lord Boston, and served him as a gardener for several years in Hedsor; ninety-five days before the end of the fourth year he married a woman of Little Marlow, and from the time of his marriage until the end of that year's service he lodged with his wife in Little Marlow forty nights, but not successively, but did not lodge for forty nights elsewhere after his marriage. It did not appear that Lord Boston had any property in Little Marlow, nor where the pauper lodged the last night of the year's service in which he married. It appeared that he did not see Lord Boston within that year in which he married, nor had any consent to be absent those forty nights; and that he never performed any service in Little Marlow on account of his master; that he continued to serve Lord Boston several years after his marriage. It was urged if a servant continued forty days in a parish in *his master's service*, the reason he gained a settlement was, his coming into such parish *with* his master; but the court would not permit the servant to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him. In reply, a variety of cases were cited to show that a man is settled where he lodges the last forty days, although not successive. Lord Mansfield, C. J. "The cases seem to have settled it."

Rex v. Nympsfield, *Cald.* 107; 2 *Bott*, 405. The same point was given up as being settled.

Rex v. Dremerchion, 3 *Bar. & Adol.* 420. John Williams and family were removed from Northop to Dremerchion. Order confirmed. Case:—The pauper, John Williams, hired with one W. Evans for a year from the 1st of May, 1819, to the 1st of May, 1820, and served with him for a year, residing in Dremerchion from the 1st of May, 1819, until November in the

same year, when he married. From that time he resided on the week days from Monday to Saturday evening at his master's house in Dremerchion, during which time he was working for his master, but Saturday night, the whole of Sunday, and until Monday morning, the pauper passed with his wife in St. Asaph parish. The pauper's year expired on Sunday, the 30th of April, 1820. He had slept the night before in St. Asaph, and he slept there that night (Sunday night) also, and on Monday morning he returned to his master's residence in Dremerchion, and commenced working as a day labourer. The contract of hiring was agreed by the pauper and his master not to be dissolved by the marriage in November, 1819. The pauper slept more than forty nights during the year in St. Asaph, but no part of the time passed in St. Asaph was in furtherance of the service, being only allowed by the pauper's master as an indulgence, nor was there any service in fact performed by the pauper for his master in St. Asaph. The question reserved was, whether the pauper was properly removed to Dremerchion. Lord *Tenterden*, C. J. "There is a distinction recognized in several cases between apprentices and hired servants. The last parish in which the servant completes a forty days' residence is that in which he is settled. But as to apprentices, the residence must be in furtherance of the contract of apprenticeship. The 7th and 8th sections of the 3 W. & M. c. 11, are differently worded; the seventh provides that if a party be hired into any parish, such service shall be a good settlement; the eighth requires a binding and inhabitation in the parish. Why there should have been such a distinction I do not know, but it has been made. *Rex v. Hedsor* (*ante*, 484) is a stronger case than this, there the sleeping out of the master's parish was without his consent." *Littledale*, J., concurred. *Parke*, J. "It is clearly established that a servant is settled in the parish where he sleeps for the last forty days of his service. Here it is agreed that there was no dissolution of the contract." *Patteson*, J., concurred. Order of sessions quashed.

Rex v. Sutton, 5 T. R. 657. Case:—H. Boardman, the pauper, was, about Christmas, hired for a year by Mr. Kerfoot, of Great Sankey, to serve in husbandry for 7*l.* 10*s.*, and 5*s.* more in case the master approved of his service; he continued in that service until by the visitation of God he was deprived of his reason in November following, when his father fetched him away to his own house at Bold, and in two or three weeks afterwards he received the wages of 7*l.* 10*s.*, but not the 5*s.*; and the father afterwards kept him at home as part of his family for about ten years in Bold, where the father died; the son all that time, as well as since, continuing in the same situation. Order confirmed. Lord *Kenyon*, C. J. "The cases that have already been decided on this subject have settled the principle on which our judgment must proceed in this case. As this is a removal from Bold to Sutton, all we are called upon to decide in this case is, whether or not the pauper be now settled in Sutton; and whether the settlement which he gained in that place has or has not been superseded by a subsequent settlement? for any question that may hereafter arise between Bold and Great Sankey will not affect this case. The pauper was hired for a year in Great Sankey; he continued in that service as long as he was capable of performing it; but in the course of the year he was deprived of his reason, and consequently rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind it is immaterial whether the servant's incapacity to perform his service proceed from an infirmity of body or of mind. Where indeed the servant commits a crime, the master may apply to a justice to have him discharged; but if no such application be made, the relation of master and servant subsists. In this case, there being no fault in the servant, nor any application to a magistrate to discharge him, (for which, indeed, there was no cause,) I am clearly of opinion that the relation of master and servant continued during the whole year, and consequently that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by Lord *Mansfield*, in *Rex v. Christchurch*, *Burr. S. C.* 497, (*ante*, 124,) that the absence of the servant on account of sickness will

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Held, that a servant obtained a settlement in the parish where he had lived and served his master ten months, and not in the parish to which he had been sent as a lunatic, and in which he had resided the last two months of the year's contract.

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not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to *Rex v. Sharrington*, ante 413, though it was not argued, it appears that the court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case; but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will beg to say a few words upon it for the sake of their information. That question is, whether supposing the pauper gained a settlement by reason of his service with Kerfoot, he is settled in Great Sankey, the parish where the master lived, and where the service was in contemplation of law performed, or in Bold, where the father lived and received his son for the last forty days of the year? And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in Great Sankey, where the service was in law performed, though the servant did not in point of fact reside there the last forty days of the year. In general the servant is settled in the parish where he serves the last forty days; but I consider the residence with the father under these circumstances as a residence in an hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish by receiving his son into his house from motives of tenderness and affection. And it must be remembered that this is not a case *sui generis*; there are others that stand *in pari ratione*. In general a bastard is settled in the parish where he is born; but if he be born in a gaol or house of correction, his settlement is in his mother's parish. And I think that *Rex v. Sharrington* goes some way to warrant my opinion in this case; for I cannot consider the pauper's residence with his father as a performance of service with his master; he was there *diverso intuitu* in order to recover from his illness, and not for the purpose of serving his master. I am therefore clearly of opinion that the pauper's former settlement has been superseded by the subsequent one which he gained in Great Sankey." The other judges concurring, both orders were quashed.

In a settlement by hiring and service, the pauper is settled where his place of rest is during such service.

Rex v. Mildenhall, 3 B. & Ald. 374. Removal by order of two justices from Mildenhall to Newmarket, All Saints. Order quashed. Case:—On the 1st May, 1817, the pauper let himself as a yearly servant to R. Bailey of Mildenhall, and entered into his service on the same day. The pauper was employed by his master every day from the commencement of his service up to the 5th of April, 1818, to drive the mail cart to and from Newmarket and Mildenhall. For this purpose he started every night from Mildenhall, and arrived at Newmarket about eleven o'clock in the evening; and after delivering the bags, &c. which generally occupied about an hour, went to bed at an inn in Newmarket, in a bed hired for him exclusively for a year, and paid for by his master. He slept until about four o'clock in the morning, when the mail-coach arrived at Newmarket from London, and the pauper used to get up and receive the Mildenhall mail-bags, and drive his cart back to Mildenhall, where he generally arrived about six o'clock. He then, after putting up his horse, &c. went to bed in a room provided for him in his master's house at Mildenhall, and slept two or three hours. He was employed during the rest of the day in Mildenhall, as his master chose, and sometimes, which was about eight or ten times in a month, he did not go to bed at all at Mildenhall. He kept all his clothes, and took all his meals in his master's house, and the room and bed in which he there slept were exclusively appropriated to him, and he considered that Mildenhall was his home, but that he took his night's rest at Newmarket. He kept no clothes nor any thing else at Newmarket, and other persons occasionally slept in the same room there with him. From the 5th April, 1818, until the 1st of May, he never drove the mail-cart at all, but lived wholly in his master's service at Mildenhall. On the 1st May, 1818, he quitted Bailey's service. By the court: "Here the pauper was, by the nature of his service, compelled to wait a few hours in the middle of the night for the return of the mail. During that time he slept there; but that sleep was not his ordinary and sufficient rest; for after he returned to his master's house at Mildenhall he went to bed in his own room,

which was there provided for his exclusive use. He did not therefore go to Newmarket as to his place of rest, and unless that were so, he could gain no settlement there. Besides, it was for the respondents below to establish affirmatively a settlement in Newmarket, and if that is left doubtful, the court will not quash the order of sessions. But here, in fact, Mildenhall appears to have been the place of rest of the pauper during his service." Order confirmed.

3. *The Place in which Settlement is acquired.*

VI. Of Settlement by Apprenticeship. (a)

The subject of settlements by apprenticeship is susceptible of the following divisions, under which it will be treated:—

6. *Of Settlement by Apprenticeship.*

1. *Of the Statutes relating to Apprentices and their Settlement.*
2. *Of the Instrument of Binding.*
3. *The Parties to the Binding.*
4. *The Execution of the Instrument.*
5. *The Term of Years.*
6. *Of the Premium and Duty thereon, and Statement thereof.*
7. *Of the Stamp on Indenture without regard to the Premium.*
8. *The other Essentials of the Contract.*
9. *Of Parish Apprentices, and Allowance by Justices.*
10. *Of inrolling the Indentures.*
11. *Of the Service and Residence.*
12. *Of Serving different Masters.*
13. *Of vacating the Apprenticeship.*

1. OF THE STATUTES RELATING TO APPRENTICES' SETTLEMENTS.

5 Eliz. c. 4, 5; 43 Eliz. c. 2; 7 Jac. I. c. 3; 3 Car. I. c. 40; 13 & 14 Car. II. c. 12; 3 W. & M. c. 11; 8 & 9 Will. III. c. 30; 2 & 3 Anne, c. 6; 8 Anne, c. 9; 9 Anne, c. 21; 12 Anne, st. 1, c. 18; 13 Geo. II. c. 17; 18 Geo. II. c. 22; 20 Geo. II. c. 19; 22 Geo. II. c. 45; 31 Geo. II. c. 11; 20 Geo. III. c. 36; 28 Geo. III. c. 48; 32 Geo. III. c. 57; 42 Geo. III. c. 46; 50 Geo. III. c. 108; 51 Geo. III. c. 80; 54 Geo. III. c. 96; 54 Geo. III. c. 107; 55 Geo. III. c. 184; 56 Geo. III. c. 139; 1 & 2 Geo. IV. c. 32; 3 Geo. IV. c. 126; 4 Geo. IV. c. 25, 29, 34, 95; 6 Geo. IV. c. 16, 107; 7 & 8 Geo. IV. c. 56; 3 & 4 Will. IV. c. 63, s. 1; 4 & 5 Will. IV. c. 76, s. 61, 67, and Annual Mutiny Act.

1. *Of the statutes relating to settlement by apprenticeship.*

The earlier enactments upon this division of the poor laws relate chiefly to the manner in which pauper children should be placed out as apprentices, and the duty imposed upon overseers, &c. in this respect, with a view to the relief of parishes, and the permanent benefit of the paupers. (b) The only statute which expressly provides that a settlement may be acquired by apprenticeship, is the 3 W. & M. c. 11, s. 8 (*post*, 452). But the 13 & 14 Car. II. c. 12, s. 1, by authorizing two justices to remove any apprentice into the parish where he last resided forty days, unless he found security, &c., impliedly made a residence by an apprentice for forty days in any one parish a sufficient settlement (and see 31 Geo. II. c. 11, s. 1, *post*, 458). And it seems to be reasonable that an apprentice should acquire a settlement in the parish which has had the benefit of his services. (c) There are other provisions regulating the mode in which the relation of master and apprentice must be created, particularly in the case of parish apprentices, the observance or neglect of which frequently form the matter of dispute. The statutory provisions on the subject are as follows:

The 5 Eliz. c. 4, s. 25—48, contained various regulations respecting apprentices, and prohibiting persons who had not served seven years from setting

5 Eliz. c. 4.

(a) See general division of the subject of settlement, *ante*, 331; and *ante*, Vol. I. tit. "Apprentices;" and *Chitty on Apprentices*.

(b) See Vol. I. tit. "Apprentices."

(c) In *St. Nicholas v. St. Peter's, Ipswich*, 2 Stra. 1066, Lord Hardwicke assigns that service as a reason why the parish should bear the burthen (*post*.)

1. *Statutes on Apprentices' Settlements.*

5 Eliz. c. 4.

5 Eliz. c. 5.
Who may take apprentices.

Must be by indenture, and enrolled.

43 Eliz. c. 2.
Binding parish apprentices.

7 Jac. 1, c. 3.

3 Car. 1, c. 40.

13 & 14 Car. 2,
c. 12.3 W. & M. c. 11.
Creating settlement.

up in any craft, mystery, or occupation. It also contained many regulations respecting the *qualifications* of persons entitled to take apprentices, and the *term of years* for which apprentices should be bound, and as to the *mode of binding*. These enactments were for the most part repealed by 54 Geo. III. c. 96 (*post*, 472.)

The 5 Eliz. c. 5, s. 12, enacts "That from henceforth it shall be lawful to all and every owner and owners of ships or vessels, and to every householder using and exercising the trade of the seas by fishing or otherwise, and to every gunner or gunners, commonly called cannoneers, and to every shipwright, to take and keep one or more apprentice or apprentices to be brought up in the said trade or trades, every of the same apprentice or apprentices to be to them bound for ten years or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, ordered, and used to all intents according to the custom of the city of London; so that the same covenant or bond of apprenticeship be made by writing *indented*, and *enrolled* in the town where the same apprentice shall be then inhabiting, if it be a town corporate; and if the town be not incorporate, then to be *enrolled in the next town incorporate* to the habitation of every such apprentice: and that the officers of every such town corporate shall take for every such enrolment not above twelve-pence; any law, statute, or other matter whatsoever to the contrary notwithstanding."

The 43 Eliz. c. 2, s. 5, enacts, "That it shall and may be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of any two (a) justices of the peace aforesaid, to bind any *such* children (b) as aforesaid to be apprentices where they shall see convenient till such man-child shall come to the age of twenty-four, (now twenty-one by 18 Geo. III. c. 47, *post*, 458), and such woman-child to the age of twenty-one years, or the time of her marriage; (c) the same to be as effectual to all purposes, as if such child were of full age, and by indenture or covenant bound him or herself."

The 7 Jac. I. c. 3, enacts, how money given for the binding out of poor children apprentices shall be employed, and by whom, and within what time the money shall be *put out*; and contains a provision "that if there be not fit persons in the parish to be bound apprentice, then poor children of any of the next adjoining parishes shall be bound apprentices," and then directs what poor children shall be so bound, and contains regulations to prevent the misapplication of money.

The 3 Car. I. c. 40, s. 22, contains a further provision as to overseers putting out apprentices.

By 13 & 14 Car. 2, c. 12, s. 1, "It shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the *quorum*, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, *apprentice*, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

The 3 W. & M. c. 11, s. 8, (before alluded to, *ante*, 451), enacts, "That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published as aforesaid." (d)

(a) One of them must be of the *quorum*. 2 *Stra.* 1110.

(b) This, with reference to the first section of the act, *ante*, 30, means "children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able

to keep and maintain their children."

(c) *Burr. S. C.* 248, *post*.

(d) "*Such notice*," &c. This refers to the third section. See 1 *Nolan, P. L.* 286, where the reason of this enactment is explained.

It has been correctly observed in these statutes, that nothing more was required by 13 & 14 Car. II. c. 12, to settle an apprentice duly bound, than a residence of forty days; and the 3 W. & M. c. 11, exempts him from the necessity created by different statutes of giving notice of his inhabitancy. 1 *Nolan*, P. L. 285, 493.

The 8 & 9 W. III. c. 30, s. 5, after reciting, that under the 43 Eliz. c. 2, it has been doubted whether the persons to whom children were bound were compellable to receive such children as apprentices, enacts and declares, "That where any poor children shall be appointed to be bound apprentices, pursuant to the said act, the person or persons to whom they are so appointed to be bound shall receive and provide for them according to the indenture signed and confirmed by the two justices of the peace, and also execute the other part of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens or overseers of the poor, before any two of the justices of the peace for that county, liberty, or riding, he or she, for every such offence, shall forfeit the sum of ten pounds, to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final, and conclude all parties." (And see construction in *Rex v. Fleet*, *Cald.* 31; and see 20 Geo. III. c. 36, *post*, 458, 459.)

By 9 & 10 W. III. c. 11, no certificated person has absolute settlement in any parish, unless he take a tenement of 10*l.* per annum or execute some parish office.

The 2 & 3 Anne, c. 6, s. 6, altered by 4 Anne, c. 19, s. 16, provides, "That parish boys bound apprentices, may be turned over to the sea service as therein mentioned; and contains regulations relative to such apprentices and their masters."

The 8 Anne, c. 9, contains regulations as to duties to be paid on premiums given with clerks and apprentices. The 32, 33 & 34 sections related to the amount of duty; and were afterwards consolidated by 44 Geo. III. c. 98, s. 1, and which was again altered by the 55 Geo. III. c. 184, (*post*, 474,) as regards the amount of duty.

Sect. 32. "That there shall be throughout the kingdom of Great Britain, raised, collected, and paid to her Majesty, her heirs and successors, the further rates, duties, and sums of money following, that is to say, the duty, rate, or sum of sixpence for every twenty shillings, for every sum of fifty pounds or under, and the duty, rate, or sum of one shilling, of every twenty shillings, of all and every sum and sums amounting to more than fifty pounds, which shall, at any time or times, from and after the first day of May, one thousand seven hundred and ten, and during the term of five years from thence next ensuing, be given, paid, contracted, or agreed for, with or in relation to every clerk, apprentice, or servant, which shall be, within the kingdom of Great Britain, put or placed to or with any master or mistress to learn any profession, trade, or employment, and proportionably for greater or lesser sums; which said duties, rates, and sums, shall be paid by the said masters or mistresses respectively."

Sect. 33. "That for the better and more effectual levying, collecting, and paying unto her Majesty, her heirs and successors, the said duties after the rates of sixpence, and one shilling for every such respective sum of twenty shillings as aforesaid, the same shall be under the government, care, and management of the commissioners for the time being appointed to manage her Majesty's duties on stamp vellum, parchment, and paper; and the same commissioners shall employ and appoint such inferior officers as shall be necessary for managing and collecting the duties last mentioned and hereby granted, and for keeping accounts thereof, and for stamping all such indentures and other writings, which are hereby required to be stamped as herein after is mentioned, and otherwise to act in and relating to the same duties as

1. *Statutes on Apprentices' Settlements.*

8 & 9 W. 3, c. 30.
Master bound to take parish apprentice.

9 & 10 W. 3. c. 11.

2 & 3 Anne, c. 6.
Sea service.

8 Anne, c. 9.
Duties on premiums.

Sixpence for every twenty shillings for fifty pounds or under, and twelve pence for every sum of above fifty pounds to be paid for every clerk or apprentice put out for five years, made perpetual by 9 Anne, c. 21 s. 7. To be paid by the master.

This duty to be under the management of the commissioners of the stamp duties.

1. *Statutes on Apprentices' Settlements.*

8 Anne, c. 9.

Premiums to be paid to the receiver-general of the stamp duties and by him into the Exchequer weekly.

The premium to be inserted in the indenture, &c. on forfeiture of double the sum. (a)

Two new stamps to be provided, &c.

her Majesty's service in this behalf shall require; and to cause such sum and sums of money to be expended and paid, from time to time, out of the duties last-mentioned and hereby granted, for salaries, and other incident charges, as shall be necessary in and for the receiving, collecting, levying, or managing the same duties during the said term; any thing in this act contained to the contrary notwithstanding."

Sect. 34. "That the duties last-mentioned and hereby granted shall be all paid or transmitted, from time to time, as this act directs, into the hands of the receiver-general for the time being of the said duties on stamp vellum, parchment, and paper, who shall keep a separate and distinct account thereof, and pay the same into the receipt of the Exchequer of her Majesty, her heirs and successors, weekly, on Wednesday in every week, unless it be a holy-day, and then the next day after which shall not be a holy-day, for the purposes in this act expressed, and under the like penalties, forfeitures, and disabilities, as are to be inflicted by this act, for diverting or misapplying any monies by this act appropriated or appointed for repayment of loans, or satisfaction of interest monies as is hereinafter mentioned."

Sect. 35. "That the full sum or sums of money received, or in any-wise directly or indirectly given, paid, agreed, or contracted for, during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, as aforesaid, shall be truly *inserted and written in words at length in some indenture or other writing, (b) which shall contain the covenants, articles, contracts, or agreements, relating to the service of such clerk, apprentice, or servant as aforesaid, and shall bear date upon the day of the signing, sealing, or other execution of the same; upon pain that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured, or contracted, for or in respect of any such clerk, apprentice, or servant, as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, forfeit double the sum so given, paid, secured, or contracted for; the one moiety of which forfeitures shall be to her Majesty, her heirs and successors; and the other moiety, with full costs, to any person or persons who shall inform and sue for the same by action of debt, bill, plaint, or information, in any court of record at Westminster, or in the Exchequer of Scotland, at any time after the executing, making, or signing of any such indenture or writing, or making any such contract or agreement, and within one year after the time limited or appointed for the service of any such clerk, apprentice, or servant, to or with such master or mistress, shall be expired.*"

Sect. 36. "That the said commissioners for managing the said duties on stamp vellum, parchment, and paper, shall provide two new stamps to be used in pursuance of this act, (over and besides the stamps heretofore requisite for or in respect of such indenture, or other writing, by virtue of the statutes in that case made,) the one of which new stamps shall denote the said duty of sixpence in the pound, and the other of the said new stamps shall denote the said duty of one shilling in the pound; and that all such indentures, or other writings, containing the sums truly given, paid, agreed, or contracted for as aforesaid, which shall, within or during the said term of five years, be entered into, executed, or signed, within the cities of London or Westminster, or within the limits of the bills of mortality, *shall be brought to the head office for stamping or marking of vellum, parchment, and paper, (c) and the duties hereby charged and payable for the sums therein to be inserted as aforesaid, shall be paid to the receiver-general for the time being of the said duties on stamp vellum, parchment, and paper; and upon such payment thereof, the same shall be stamped with one of the said new*

(a) The poundage duty on premiums of so much in the pound imposed by this section was repealed by 44 Geo. III. c. 98, and see *infra* note (c).

(b) Not applicable to assessments. *R. v. Ide*, 2 B. & Adol. 866, *post*.

(c) This is virtually repealed by the 55 Geo. III. c. 184 (*post*, 474), requiring the stamp duty to be impressed before the indenture is executed. There is now only one stamp; see 5 B. & Ald. 412, *post*.

stamps, as the case shall require, within one month after the respective dates thereof."

Sect. 37. "That all the said indentures, and other writings, which shall or ought to contain the whole sum truly given, paid, agreed, or contracted for, as aforesaid, which shall, within or during the said term of five years, be entered into, executed, or signed, in any part of Great Britain, (not being within the limits of the said weekly bills of mortality,) shall (at the option of the party concerned) be brought or sent (a) either to the head office within the limits of the said weekly bills, or else to some of the collectors, appointed or to be appointed for her Majesty's duties upon stamp vellum, parchment, and paper, who shall reside without the limits of the said weekly bills, in England, Wales, or the town of Berwick upon Tweed, or to some of the officers to be appointed for the duties by this act granted in Scotland, within two months after the date, execution, or signing of every such indenture or writing respectively; and upon producing of every such indenture or writing, either at the said head office, or to such collector, or other officer, as aforesaid, her Majesty's duties hereby granted shall be paid, either to the said receiver-general at the said head office, or to such collector or other officer as aforesaid; and in case the said payment shall be made to the immediate hands of the receiver-general in the said head office, for her Majesty's use, then the indenture or writing, for which such payment shall be made, shall be forthwith stamped with one of the said new stamps, as the case shall require; and in case such payment shall be made to the hands of such collector, or other officer, without the limits of the said weekly bills, the same collector or other officer is hereby required to endorse on such indenture or other writing a receipt for the monies so paid, in words at length, bearing date the day on which such payment shall be made, and to subscribe his name thereto, (to the intent that he may thereby be charged with every sum so paid to him,) and forthwith deliver back the said indenture or writing so endorsed to the bringer thereof."

Sect. 38. "That every such indenture or writing so endorsed (in case the same be entered into, executed, or signed within the space of fifty miles, to be computed from the limits of the said weekly bills of mortality,) shall, *within three months after the date* or making thereof, and if the same be entered into, executed, or signed in any part of Great Britain at a greater distance from the limits aforesaid, shall, within six months after the date or making thereof, be brought or sent to the said head office, where the same (being produced with the said receipt endorsed) shall be immediately stamped with one of the said new stamps, as the case shall require, by the officer appointed, or to be appointed, for that purpose."

Sect. 39. "That all such indentures or writings as aforesaid, wherein shall not be *truly inserted and written the full sum and sums of money received*, or in any wise directly or indirectly given, paid, secured, or contracted for, with or in relation to such clerk, apprentice, or servant, as aforesaid, or whereupon the duties payable by this act shall not be duly paid or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, within the respective times herein for that purpose severally and respectively limited, *shall be void*, and not available in any court or place, or to *any purpose whatsoever*; (b) and the clerk, apprentice, or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation, or company, and of following or exercising the intended profession, trade, or employment; any charter, law, or custom to the contrary notwithstanding." (b) (See *Rex v. Chipping Norton*, 5 Bar. & Ald. 412.)

1. Statutes on Apprentices' Settlements.

8 Anne, c. 9.

Indentures to be brought to the head office, &c., in two months after date; (a)

and there the duty to be paid and indenture stamped, &c., or the collector to indorse a receipt, &c.

Within what time indentures shall be stamped. (a)

Indentures, in which the full sum received is not charged, &c., void. (b)

And clerk, &c., incapacitated.

(a) See preceding note.

(b) And no settlement gained, (*Rex v. Edgeworth*, 3 T. R. 323; 5 B. & Ald. 412; 8 Taunt. 495; ante, Vol. I. tit. "Apprentice," and post, (6th head,) and see *R. v. Chipping Norton*, 5 Bar. & Ald.

412. But a premium, given by parish officers upon the binding out of a poor apprentice, need not be set out in the indenture, such indenture being exempted from duty by 8 Anne, c. 9, s. 40, and the insertion of the premium being required

1. *Statutes on Apprentices' Settlements.*

8 Anne, c. 9.

Parish or public charities not charged.

Forging new stamps felony.

Commissioners to be sworn.

The oath.

No indenture to be admitted in evidence, unless oath made of the sums really paid, &c.

Commissioners to observe the orders of the treasury.

No fee for stamps.

Sect. 40. "That nothing in this act contained shall be construed to extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant, who shall be put or placed out *at the common or public charge of any parish or township, or by or out of any public charity*, or to require the stamping with any such new stamp as aforesaid, of any indenture, articles, covenant, agreement, or contract relating to such apprentice or servant as last-mentioned; any thing herein contained to the contrary notwithstanding." See also 55 Geo. III. c. 184, Sched. part i. *post*, 474.

Sect. 41. "That if any person shall forge or counterfeit the said new stamps to be provided in pursuance of this act, or either of them, or impress any vellum, parchment, or paper with any such counterfeit stamp, or counterfeit any receipt for any monies payable by virtue of this act, every such person, being convicted of any of the offences before-mentioned, shall be adjudged a felon, and suffer as in cases of felony, without benefit of clergy." (a).

Sect. 42. "That every commissioner and officer who shall act in or about the managing or collecting the duties last-mentioned, and hereby granted, shall, before he shall act in or about the same, take the oath following; that is to say,

I, A. B., do swear, that I will faithfully execute the trust reposed in me pursuant to the act of parliament, intituled, An act for laying certain duties upon candles, and certain rates upon monies to be given with clerks and apprentices, towards raising her Majesty's supply for the year one thousand seven hundred and ten, without fraud or concealment; and shall from time to time true account make of my doings therein, and deliver the same to such person or persons as her Majesty, her heirs and successors, shall appoint to receive such account; and shall take no fee, reward, or profit for the execution or performance of the said trust, or the business relating thereto, from any person or persons, other than such as shall be paid or allowed by her Majesty, her heirs and successors, or some other person or persons under her or them to that purpose authorized.

Which oath shall and may be administered by any two or more of the commissioners last mentioned, or any justice of the peace."

Sect. 43. "That no indenture or writing required by this act to be stamped as aforesaid, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party, on whose behalf the same shall be given or admitted in evidence, do first make oath, that to the best of his or her knowledge, the sum or sums therein for that purpose inserted or mentioned was or were really and truly all that was directly or indirectly given, paid, secured, or contracted for, on behalf or in respect of such clerk, apprentice, or servant, to or for the benefit of the master or mistress to or with whom such clerk, apprentice, or servant was put or placed."

Sect. 44. "That the said commissioners for managing the said duties on stamp vellum, parchment, and paper, and all other officers who shall be employed in or about the collecting or managing of the duties last mentioned and hereby granted, shall, in and for the better execution of their several offices and trusts, observe and perform such rules, methods, and orders as they respectively shall from time to time receive from the Lord High Treasurer now being, or the Lord High Treasurer of the Exchequer, or commissioners of the treasury for the time being; and that no fee or reward shall be demanded or taken by any of her Majesty's officers, relating to the said stamp

for no other purpose but to ascertain the amount of the duty. (*Rex v. Oadby*, 1 B. & Ald. 477; and see 55 Geo. III. c. 184, Schedule, tit. "Apprentice," *post*, 474; and 18 Geo. II. c. 22, s. 23, 24; and 22 Geo. II. c. 45.) An indenture of apprenticeship executed *before* 44 Geo. III. c. 98, and not properly stamped

with the premium stamp, could not afterwards be properly stamped; *quære* as to an indenture executed *since* that act; 5 B. & Ald. 414.

(a) But the punishment of death for forgery is now repealed. See 2 & 3 W. 4, c. 123, and 3 & 4 W. 4, c. 44.

duties, from any of her Majesty's subjects, for any matter or thing to be done in pursuance of this act; and in case any officer entrusted, or to be entrusted, in the execution of this act, in relation to the said stamp duties, shall refuse or neglect to perform any matter or thing by this act required to be done or performed by him, whereby any of her Majesty's subjects shall or may sustain any damage whatsoever, such officer so offending shall be liable, by any action to be founded on this statute, to answer to the party grieved all such damages with treble costs of suit."

Sect. 45. "That during the said five years, where any *thing or things*, (a) not being lawful money of Great Britain, shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured, to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice, or servant, for whom a duty is chargeable by this act; the duties hereby granted and last-mentioned shall be answered and paid for the full value or values of such *thing or things*, (a) and the same duties for the said values shall be secured and answered in the same manner and form, and under the like pains, penalties, forfeitures, and incapacities, as are before in this act provided for securing the said rates upon monies given or paid, or agreed to be given or paid, with such clerks, apprentices, or servants as aforesaid.

The 9 Anne, c. 21, renders perpetual the duties and regulations of 8 Anne, c. 9, and the words "*or other considerations*," are substituted for "*thing or things*," in the prior act.

The 12 Anne, stat. 1, c. 18, s. 2, enacts, "that if any person whatsoever, who shall be an apprentice, bound by indenture to, or shall be a hired servant to or with any person whatsoever, who did come into, or shall reside in any parish, township, or place, in that part of Great Britain called England, *by means or license of such certificate*, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding; and such servant, by being hired by or serving as a servant as aforesaid to such person, shall not gain, or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been a hired servant or servants to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding."

The 10 Geo. II. c. 31, regulates to what waterman an apprentice may be bound; and see *Rex v. Gravesend*, 3 Bar. & Adol. 240, *post*.

The 13 Geo. II. c. 17, s. 2, enacts, "That every person, who, not having before used the sea, shall bind himself apprentice to serve at sea, shall be freed and exempted from being impressed for the full space of three years, to be computed from the time of his binding himself apprentice as aforesaid."

The 18 Geo. II. c. 22, s. 23, 24, enacts, "That if the master shall neglect to pay the duties, he shall, besides all other penalties, forfeit double duty."

The 20 Geo. II. c. 19, s. 3, enacts, "That it shall and may be lawful to and for any two or more such justices, upon any complaint or application by any apprentice put out by the parish, or any other apprentice, upon whose binding out no larger a sum than five pounds of lawful British money was paid, touching or concerning any misuse, refusal of necessary provision, cruelty, or other ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices, at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made, upon oath, to their satisfaction (whether the master or mistress be present or not, if service of the summons be also, upon oath,

1. *Statutes on Apprentices' Settlements.*

8 Anne, c. 9.

Officer neglecting his duty answers full damages and treble costs.

Where any thing shall be given to any master, not being money, the full value of such thing to be answered for the duties.

9 Anne, c. 21.

12 Anne, st. 1, c. 18.

Person bound apprentice, or being a hired servant, to one who came into a parish *by certificate*, shall not gain a settlement.

10 Geo. 2, c. 31.

13 Geo. 2, c. 17.

18 Geo. 2, c. 22.

20 Geo. 2, c. 19.

Justices, upon complaint of apprentices, to summon the master, &c., and, upon satisfactory proof, to discharge the apprentice.

(a) The 9 Anne, c. 21, substitutes "*or other considerations*," for the above words, "*thing or things*."

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20 Geo. 2, c. 19.

Justices, upon complaint of masters against apprentices, and proof upon oath, to punish the offender by commitment, &c.

Persons aggrieved may appeal.
Exception.

Costs not to exceed forty shillings.

No *certiorari*.

Stannaries not included.

22 Geo. 2, c. 45.

31 Geo. 2, c. 11.
Person bound apprentice by deed, &c., though not indented, being first duly stamped, is entitled to a settlement where apprenticed.

2 Geo. 3, c. 15.

18 Geo. 3, c. 47.

20 Geo. 3, c. 36.

All persons to whom any children shall be appointed to be bound, obliged to provide for them, &c.

proved) the said justices may discharge such apprentice, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid."

Sect. 4. "That it shall and may be lawful to and for such justices, upon application or complaint made, upon oath, by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage, or ill-behaviour, in such his or her service (which oath such justices are hereby empowered to administer), to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month; or otherwise by discharging such apprentice, in manner and form before mentioned."

Sect. 5. "That if any person or persons shall think himself, herself, or themselves aggrieved by such determination, order, or warrant of such justice or justices as aforesaid (save and except any order of commitment), he, she, or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made; which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, appellant or respondent, as the said sessions shall judge reasonable, not exceeding forty shillings; the same to be levied by distress and sale, in manner before mentioned."

Sect. 6. "That no writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatsoever, had in pursuance of this act, into any of his Majesty's courts of record at Westminster."

Sect. 7. "That nothing in this act contained shall extend to the stannaries in the counties of Devon and Cornwall."

The 22 Geo. II. c. 45, s. 5, 6, 7, 8, contains important provisions enabling the master or apprentice, on certain terms, and on payment of double duty, to render the indenture valid, even within two years after the termination of the apprenticeship. (See these clauses, *post*, sixth head.)

The 31 Geo. II. c. 11, s. 1, enacts, "That no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing, or contract, *not indented*, being first legally stamped, shall be liable to be removed from the town, parish, or place, where he or she shall have been so bound an apprentice, and resident *forty* days, by virtue of any order of removal, granted by two justices of the peace of any county, riding, division, city, borough, town corporate, or place; or by virtue of any order, of the justices at their general or quarter sessions, by reason or on account of such deed, writing, or contract, not being indented only." See *Rex v. Ditchingham*, 4 T. R. 770.

The 2 Geo. III. c. 15, s. 22 and 23, was repealed by 50 Geo. III. c. 108, s. 1.

The 18 Geo. III. c. 47, prohibits the binding of a male apprentice beyond the age of twenty-one years.

The 20 Geo. III. c. 36, intituled, "An Act for obviating doubts, touching the binding and receiving of poor children apprentices, in pursuance of several acts of parliament made for the relief of the poor within particular incorporated hundreds or districts; and for ascertaining the settlement of bastard children born in the houses of industry within such hundreds or districts," enacts, "That the respective persons to whom any poor children shall be appointed to be bound apprentices, in pursuance of any act or acts of parliament made and passed for the better relief and employment of the poor in any particular incorporated hundreds or districts, within that part of Great Britain called England, shall, and they are hereby required to receive and provide for such children, according to the indentures to be executed by the directors and acting guardians of the poor for such respective hundreds or districts, for the binding of such poor children, in like manner as persons are now obliged by the laws in being to receive and provide for poor children appointed to be bound apprentices by churchwardens and overseers of the

poor with the assent of two justices of the peace, and also to execute the counterpart of such indentures respectively. And if any person, to whom any poor child shall be appointed to be bound apprentice, in pursuance of any such act of parliament as aforesaid, shall refuse or neglect to receive and provide for such poor child, or to execute the counterpart of the indenture for binding such child as aforesaid, every person so refusing or neglecting, upon proof of such refusal or neglect being made, by the oath of one of the directors or acting guardians, or of some other credible witness, before any two justices of the peace, acting in and for the county, liberty, or place within which the incorporated hundred or district to which such child belongs shall be situate, shall forfeit and pay to the directors and acting guardians of the poor for such incorporated hundred or district, or to their treasurer or appointee, to be applied to the relief of the poor within the same, the sum of ten pounds; such penalty or forfeiture to be levied, by distress and sale of the goods of the person refusing or neglecting as aforesaid, by warrant under the hands and seals of such justices; saving always to the person, to whom any poor child shall be so appointed to be bound an apprentice, his or her appeal to the next general or quarter sessions of the peace for that county, liberty, or place, whose order therein shall be final." (See 8 & 9 W. III. c. 30, s. 5, *ante*, 453).

Sect. 2. "Provided always, that nothing in this act contained shall be construed to compel any person to take any such poor child apprentice as aforesaid, unless such person shall be an inhabitant and occupier of lands, tenements, or hereditaments, in the parish to which such child belongs; and that all bastard children born or to be born in the house of industry within any such incorporated hundred or district, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled."

The 28 Geo. III. c. 48, intituled "An Act for the better Regulation of Chimney-Sweepers and their Apprentices," enacts, "That from and after the fifth day of July, one thousand seven hundred and eighty-eight, it shall and may be lawful to and for the churchwardens and overseers of the poor, for the time being, of the several and respective parishes, townships, or places, within the kingdom of Great Britain, by and with the consent and approbation of two or more of his Majesty's justices of the peace, acting in and for any county, riding, city, town corporate, borough, or division, within Great Britain, (such consent and approbation to be signified by such justices in writing, under their hands, according to the form prescribed by the indenture contained in the schedule hereunto annexed), to bind or put out any boy or boys, who is, are, or shall be of the age of eight years or upwards; and who is, are, or shall be chargeable, or whose parents are or shall become chargeable to the parish or parishes, or places, where they shall so be; or who shall beg for alms; or by and with the consent of the parent or parents of such boy or boys, to be apprentice or apprentices to any person or persons using or exercising the trade, business, or mystery of a chimney-sweeper, for so long time, and until such boy or boys shall attain or come to the age of sixteen years; and such binding out any such apprentice and apprentices shall be as effectual in the law, to all intents and purposes, as if such boy or boys was or were of full age, and by indenture had bound himself or themselves an apprentice or apprentices."

Sect. 2. "And, to the end that the time of the continuance of the service of such apprentice or apprentices may plainly and certainly appear; be it further enacted, That the age of every such boy or boys, so to be bound apprentice or apprentices, shall be mentioned and inserted in such indenture, being taken truly from the copy of the entry in the register book, wherein the time of his or their being baptized is or shall be entered (where the same can or may be had); which copy shall be given and attested by the minister, vicar, or curate of such parish or parishes, or places wherein such boy or boys' baptism shall be registered, without fee or reward, and may be written upon paper or parchment, without any stamp or mark; and where no such copy of such boy or boys being baptized can be had, such justices of the peace shall, as fully as they can, inform themselves of his or their age or

1. *Statutes on Apprentices' Settlements.*

20 Geo. 3, c. 36.

28 Geo. 3, c. 48.
Churchwardens and overseers of the poor, with consent of two justices, may bind boys, chargeable, &c., apprentices to chimney-sweepers.

The age of the apprentice to be inserted in the indenture.

1. *Statutes on Apprentices' Settlements.*

28 Geo. 3, c. 48.
Reference to the
form of the in-
denture in the
schedule.

Penalty on per-
sons taking ap-
prentices under
the age of eight
years.

Overseers of the
poor of any town-
ship or village
may act as
churchwardens.

Justices to deter-
mine complaints
between masters
and apprentices.

Not more than
six apprentices at
the same time.

ages, and from such information shall insert the same in the said indenture; and the age of such boy or or boys, so inserted and mentioned in the said indenture (in relation to the continuance of his or their service) shall be taken to be his and their true age and ages, without any further proof thereof."

Sect. 3. "And, to the end and intent that there may be no doubt or uncertainty as to the form of the indenture, by which such boy or boys shall be bound apprentice or apprentices as aforesaid, and that the stipulations and agreements to be made and entered into by the said master or mistress may plainly and fully appear; be it enacted by the authority aforesaid, That such indenture shall be made and written out according to the form in the schedule hereunto annexed, and that the same shall not be charged with, or liable to, the payment of any higher or other stamp duty, than is now charged upon indentures for binding out poor children by their respective parishes or places; any law or statute to the contrary notwithstanding."

Sect. 4. "That all indentures, covenants, promises, and bargains, hereafter to be made, or taken, of or for the having, taking, employing, retaining, or keeping of any boy or boys, as or in the nature of an apprentice or apprentices, or servant or servants employed in the capacity of a climbing boy or chimney-sweeper, who shall be under the age of eight years as aforesaid, than is by this act limited, ordained, and appointed, shall be absolutely void in the law to all intents and purposes: and that every person who shall from henceforth have, take, employ, retain, or keep, any such boy or boys, as or in the nature of an apprentice or apprentices, or servant employed in the capacity of a climbing boy or chimney-sweeper as aforesaid, who shall be under the age of eight years as aforesaid, contrary to the tenor and true meaning of this act, and being convicted thereof, as hereinafter mentioned, shall forfeit and pay for every such apprentice or servant, so by him or her had, taken, employed, retained, or kept, any sum not exceeding ten pounds, nor less than five pounds."

Sect. 5. "And whereas, in many large parishes within this realm, there are several townships or villages, and overseers of the poor are chosen and appointed within and for each such township or village respectively; be it therefore further enacted by the authority aforesaid, That the overseers of the poor of every such township or village shall and may from time to time, within every such township or village, do, perform, and execute all and every the acts, powers, and authorities hereby enacted or directed to be done, performed, or executed, by the churchwardens or overseers of the poor of a parish or place; any thing herein, or in any other law or laws, contained to the contrary in anywise notwithstanding."

Sect. 6. "That it shall and may be lawful for one or more such justice or justices, and he or they shall have full power and authority, and is and are hereby authorized and empowered to inquire into and examine, hear, and determine, as well all complaints of hard or ill usage from the several and respective masters or mistresses, to whom such apprentice and apprentices shall be so bound as aforesaid, as also all complaints of such boys as already have, or who shall at any time hereafter voluntarily put themselves apprentices to such trade, business, or mystery of a chimney-sweeper as aforesaid; and in like manner also to inquire into and examine, hear, and determine all complaints of masters or mistresses against such apprentice and apprentices, and to make such orders therein respectively, as he or they is or are now enabled by law to do in other cases between masters and apprentices."

Sect. 7. "That no person or persons using or exercising the trade, business, or mystery of a chimney-sweeper, shall retain, keep, or employ any more than six apprentices at one and the same time; and that the name of every person so taking or receiving an apprentice or apprentices as aforesaid, and also the place of his or her abode, shall be marked or put upon a brass plate, to be set or affixed in the front of a leathern cap, which every master or mistress shall provide for each such apprentice, and which he shall wear when out upon his duty; and that every master or mistress shall forfeit for every apprentice so retained, kept or employed by him or her beyond the

number limited by this act, or for neglecting to provide each such apprentice with such leathern cap, and brass plate to be so affixed thereupon, and marked with his or her name and place of abode as aforesaid, contrary to the true intent and meaning of this act, any sum not exceeding the sum of ten pounds, nor less than five pounds."

Sect. 8. "That if any such master or mistress shall misuse or evil treat his or her apprentice, or that the said apprentice shall have any just cause to complain of the forfeiture or breach of any of the covenants, clauses, or agreements, to be expressed and contained in such indenture, made and written out according to the form in the schedule hereunto annexed, on the part or behalf of such master or mistress, then, and in such case, such master or mistress, being convicted thereof in manner hereinafter mentioned, shall forfeit and pay for every such offence any sum not exceeding ten pounds, nor less than five pounds."

Sect. 9. "That no person or persons using or exercising the trade, business, or mystery of a chimney-sweeper, shall let out to hire, or lend by the day or otherwise, to any other person for the purpose of sweeping chimneys, any boy or boys that are already apprentice or apprentices, or that shall hereafter be bound apprentice or apprentices, under the directions of this act, nor shall cause such boy or boys to call the streets before seven of the clock in the morning, nor after twelve of the clock at noon, between Michaelmas and Lady-day, nor before five of the clock in the morning, nor after twelve of the clock at noon, between Lady-day and Michaelmas; and that if any master or mistress shall, after the passing of this act, offend in any of the cases aforesaid, he or she shall forfeit and pay for every such offence any sum not exceeding ten pounds, nor less than five pounds."

Sect. 10. "That all convictions for penalties and forfeitures, by this act imposed for any offence against the same, shall be made before one or more justice or justices of the peace, acting for the county, riding, city, town, borough, or division, where such offence was committed, either by confession of the offender, or upon the oath of one or more credible witness or witnesses; and for that purpose it shall be lawful for one or more such justice or justices, upon complaint made to him or them thereof, to summon the person or persons so offending before him or them to answer to such complaint in such manner as he or they is and are authorized to do in any other matter cognizable before a magistrate."

Sect. 11. "That all penalties and forfeitures by this act imposed for any offence, neglect, or default against the same, and all costs and charges to be allowed and ordered by the authority of this act, shall be levied by distress and sale of the goods and chattels of the offender, or person liable or ordered to pay the same respectively, by warrant under the hand and seal of one or more such justice or justices of the peace acting for the county, riding, city, town, borough, or division, where such offence, neglect, or default shall happen; and such order for payment of such costs or charges shall be made, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charges for making the same; which warrant such justice or justices is and are hereby empowered and required to grant, upon conviction of the offender, by confession, or upon the oath of one or more credible witness or witnesses, or upon order made as aforesaid; and the penalties and forfeitures, costs and charges, when so levied, shall be paid, the one half to the informer, and the other half to the overseers of the poor of the parish, township, or place, where the master or mistress of such apprentice shall dwell and inhabit; and in case such distress cannot be found, and such penalties and forfeitures, or the said costs or charges, shall not be forthwith paid, it shall and may be lawful for such justice and justices, and he and they is and are hereby authorized and required, by warrant under his or their hand and seal, or hands and seals, to commit such offender or offenders, or person or persons liable to pay the same respectively, to the common gaol or house of correction of the county, riding, city, town, borough, or division, where the offence shall be committed, or such order as aforesaid shall be made, for any

1. *Statutes on Apprentices' Settlements.*

28 Geo. 3, c. 48.

Penalty on the master for breach of any of the covenants specified in the indenture.

That boys shall not be let out to hire, nor to call the streets before a certain time.

Convictions for penalties and forfeitures to be made before one or more justices of the peace.

Penalties how to be levied and applied.

1. *Statutes on Apprentices' Settlements.*

28 Geo. 3, c. 48.

No warrant of distress to be issued until six days after the conviction.

Distress not unlawful for want of form, &c.

Plaintiff not to recover for any irregularity, if tender of sufficient amends be made.

Justices to administer oaths.

Persons aggrieved may appeal, &c.

Public act.

time not exceeding three months, unless the said penalty, forfeiture, costs, or charges, shall respectively be sooner paid."

Sect. 12. "Provided, nevertheless, that no warrant of distress shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him or her for payment thereof."

Sect. 13. "That where any distress shall be made for any sum or sums of money, to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any default or want of form in any proceedings relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties distraining; but the person or persons aggrieved by such irregularity may recover a full satisfaction for the special damage in an action on the case."

Sect. 14. "That no plaintiff or plaintiffs shall recover in any action for any such irregularity, trespass, or wrongful proceedings, if tender of such amends shall be made by or on the behalf of the party or parties who shall have committed, or caused to have been committed, any such irregularity or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant, in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall see fit, whereupon such proceedings or orders and judgments shall be had, made, and given, in and by such court, as in other actions where the defendant is allowed to pay money into court."

Sect. 15. "That where any oath is hereby required and directed to be taken, the justice or justices of the peace of the county, riding, city, town, borough, or division, where the offence shall be committed, shall administer, and he or they is and are hereby respectively empowered to administer the same."

Sect. 16. "That if any person shall think himself or herself aggrieved by any thing done by any justice or justices of the peace, in pursuance of this act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county, riding, city, town, borough, or division, wherein the cause of such complaint shall arise, having first entered into a recognizance, with sufficient surety, before such justices, to prosecute and abide by the order or orders that shall be made on such appeal, and also giving, or causing to be given, to the justice by whose act or acts such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall have arisen."

Sect. 17. "That this act shall be deemed, adjudged, and taken to be a public act; and be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without specially pleading the same." (See also 56 Geo. III. c. 139, *post*, 475.)

The Schedule to which the Act refers.

Form of indenture to a chimney-sweeper.

This Indenture, made the _____ day of _____ in the _____ year of the reign of our sovereign Lord, George the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c., and in the year of our Lord _____ between A. B. and C. D., churchwardens and overseers of the poor of the parish of _____ in the county of _____ [or "E. F., the father or next friend of the boy to be placed out," as the case may be], of the one part, and _____ of the parish of _____ in the county of _____ chimney-sweeper, of the other part, witnesseth, That the said churchwardens and overseers of the poor [or "the said E. F.," as the case may be], by and with the consent and approbation of G. H. and I. K., two of his Majesty's justices of the peace acting in and for the county, riding, city, town, borough, or division [as the case may be], signified as hereunder written, put, bound, and by these presents _____ put and bind a poor boy of the said parish, township, or place, being of the age of _____

years [as the case may be], to be apprentice to the said *he being* his first, second, third, fourth, fifth, [or] sixth apprentice [as the case may be], to learn the trade, business, art, and mystery of a chimney-sweeper, and with him [or "her"] to dwell, remain, and serve, from the day of the date of these presents, for and during the term of *years, from hence next ensuing, fully to be complete* and ended; during all which time he, the said *apprentice, his said* master [or "mistress"] faithfully shall serve and obey, his [or "her"] secrets keep, and his [or "her"] lawful commands every where gladly do and perform; he shall not haunt ale-houses or gaming-houses, nor absent himself from the service of his said master [or "mistress"] day or night, without his [or "her"] leave, but in all things as a faithful apprentice shall behave himself towards his said master [or "mistress"] and all his [or "her"] during the said term: And the said *in* consideration of the good will which he [or "she"] hath and beareth towards the said apprentice, and of the faithful service so to be performed by him, doth hereby covenant, promise, and agree with the said churchwardens and overseers of the poor [or "the said E. F.," as the case may be], that he [or "she"], the said his [or "her"] said apprentice, in the art and mystery of a chimney-sweeper, which he [or "she"] now useth, shall and will teach and instruct, or cause to be taught and instructed, in the best manner that he [or "she"] can, and shall and will provide and allow unto the said apprentice, during all the said term, competent and sufficient meat, drink, washing, lodging, apparel, and all other things necessary for the said apprentice: And that the said *executors, administrators, or* assigns, shall not nor will assign over this present indenture, or the apprentice to be bound thereby, without the consent and approbation, in writing, of two or more such justices of the peace, to be signified according to the form of the approbation hereunder written. And whereas, from the nature of the business or employment of a chimney-sweeper, it is necessary for the boys, employed in climbing, to have a dress particularly suited to that purpose, which dress is only fit for that part of the occupation; the said *doth hereby also covenant, promise, and agree to and with the* said churchwardens and overseers of the poor [or "the said E. F.," as the case may be], to find and allow such suitable dress for the said apprentice, as often as need or occasion shall be and require, and provide for and deliver to the said apprentice, once in every year at least, during the term aforesaid, over and above the said dress proper for climbing, one whole and complete suit of clothing, with suitable linen, stockings, hats, and shoes: And further, that the said *shall and* will, at least once in every week, cause the said apprentice to be thoroughly washed and cleansed from soot and dirt, and shall and will require the said apprentice to attend the public worship of God on the Sabbath day, and permit and allow him to receive the benefit of any other religious instruction; and that the said apprentice shall not wear his sweeping dress on that day: And that the said *shall not nor will compel or oblige the said apprentice to call the streets, or any other* places, before seven of the clock in the morning, nor after twelve of the clock at noon, between Michaelmas and Lady-day, nor before five of the clock in the morning, nor after twelve of the clock at noon, between Lady-day and Michaelmas: And that the said *shall not, nor will at any time during the said term, let out* his [or "her"] said apprentice for hire by the day, night, or otherwise, to any other person or persons exercising or using the said trade, nor shall the said *or any person or persons whomsoever by his [or "her"] directions, require or force* him, the said apprentice, to climb or go up any chimney which shall be actually on fire, nor make use of any violent or improper means to force him to climb or go up any such chimney; but shall in all things treat his [or "her"] said apprentice with as much humanity and care as the nature of the employment of a chimney-sweeper will admit of. In witness, &c.

Form of Approbation by Justices.

We, the above-named G. H. and I. K., two of his Majesty's justices of the peace acting in and for the county, riding, city, town, borough, or division [as the case may be], having inspected and examined the above-named [the boy to be placed out or assigned over], do hereby consent to, and approve of his being bound [or "assigned over"] as an apprentice, to the above-named [the master or mistress], according to the terms and stipulations expressed in the above-written indenture.

1. Statutes on Apprentices' Settlements.

28 Geo. 3, c. 48.

Form of approbation by justices.

The 32 Geo. III. c. 57, intituled "An Act for the further Regulation of Parish Apprentices," enacts, "that from and after the first day of July, one

32 Geo. III. c. 57. A covenant for

1. *Statutes on Apprentices' Settlements.*

32 Geo. 3, c. 57.

maintenance of parish apprentices, with whom no more than five pounds shall be given, to continue in force no longer than three months after the death of the master, &c.

Proviso to that effect to be annexed to covenant, but if omitted, the covenant to continue no longer in force.

Within three months after the death of a master, two justices may order apprentices to serve the residue of their terms with persons of the description herein specified, on application, &c.

thousand seven hundred and ninety-two, in case of the death of any master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than five pounds has been or shall be paid, such covenant as is before mentioned for the maintenance of such apprentice, inserted in the indenture of apprenticeship, by which such apprentice shall have been or shall be bound, shall not continue and be in force for and during any longer time than for three calendar months next after the death of such master or mistress, and that during such three calendar months such apprentice shall continue to live with and serve, as an apprentice, the executors and administrators of such master or mistress, some or one of them, or such person or persons as such executors or administrators, some or one of them, shall appoint; and the master or mistress whom such apprentice shall accordingly serve during the said three calendar months, and also such apprentice shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices; and that in all such parish indentures of apprenticeship as aforesaid, which shall be made from and after the first day of July, one thousand seven hundred and ninety-two, there shall be annexed to the covenant in such indentures to be entered into on the part of the master or mistress of such apprentice, for such maintenance as aforesaid, a proviso declaring, that such a covenant shall not be made to continue and be in force for any longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; which proviso may be in the form or to the effect mentioned in the schedule hereunto annexed, marked with the letter A.; and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master, for the maintenance of the apprentice, shall be deemed and taken to continue in and be in force for no longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; any thing in any such covenant to the contrary notwithstanding."

Sect. 2. "That within such three calendar months after the death of such master or mistress, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place, where such master or mistress shall have died, on application made to them by the widow of such master, or by the husband of such mistress, or by any son or daughter, brother or sister, or by any executor or executrix, administrator or administratrix, of such master or mistress, by indorsement on any such indenture of apprenticeship, or the counterpart thereof, or by any other instrument in writing, (which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed marked with the letters B. and C.,) to order and direct that such apprentice shall serve as an apprentice any one of such persons so making such application as aforesaid (such person having lived with, and having been part of the family of, such master or mistress at the time of his or her death,) as the said justices shall in their discretion think fit, for and during the residue of the term mentioned in such indenture of apprenticeship; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and that from and after such order shall be made, the executors and administrators, and the personal assets, estate, and effects of the master or mistress so dying as aforesaid, shall be released and discharged of and from any promise or covenant whatsoever, contained in any such indenture of apprenticeship, on the part of such master or mistress, his or her executors or administrators, to be done and performed; and the person obtaining the same shall be, and be deemed and taken to be, the master or mistress of such apprentice, in like manner as if such apprentice had been originally bound to such master or mistress; and that such last-mentioned master or mistress, his or her executors and administrators, each and every of them, shall be held and bound by the several promises and covenants contained in any such indenture of apprenticeship on the part of the master or mistress therein named, his or her executors or

administrators, to be done and performed, in like manner as if such master or mistress obtaining such order as aforesaid had duly executed the counterpart of such indenture; and that such master or mistress and apprentice shall be subject and liable to the several penalties, provisions and regulations which shall then be in force for the better government and good order of masters and parish apprentices; and that all justices of the peace shall have the like powers and authority with respect thereto as they shall then have by any act or acts of parliament relating to parish apprentices."

Sect. 3. "That all and singular the regulations and provisions hereinbefore made, and directed to take place on the death of the original master or mistress, shall be deemed and taken to relate to the like event of the death of any such subsequent master or mistress, and to their several relations and representatives before enumerated, from time to time, as often as the case shall happen, during the continuance of the term mentioned in any such indenture of apprenticeship."

Sect. 4. "That in case no such application shall be made as aforesaid within three calendar months next after the death of such master or mistress, or in case such two justices, to whom any such application as aforesaid shall have been made, shall not think fit that such apprenticeship should be continued, then the said apprenticeship shall be determined, and the indenture of apprenticeship and covenants therein contained shall be at an end, in like manner as they would have been at the expiration of the term therein mentioned."

Sect. 5. "That nothing herein-before contained shall extend, or be construed to extend, to any parish apprentice, but to such only as shall be living with, and shall make part of the family, or shall be in the actual employment, of such original master or mistress, or of any subsequent master or mistress appointed under and by virtue of the several provisions of this act at the time of the death of any such masters or mistresses respectively."

Sect. 6. "That in case any such original master or mistress as aforesaid, or any master or mistress appointed under or by virtue of this act, shall, during the term of any such parish apprenticeship as aforesaid, or if the executors or administrators of such masters or mistresses, any or either of them, having assets, shall, during such three calendar months as aforesaid, refuse or neglect to maintain and provide for any such apprentice according to the terms of such covenant, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place in which the parish or place shall lie, to which such apprentice shall belong, on complaint of such apprentice, or of the churchwardens and overseers of the poor of such parish or place, by warrant under their hands or seals, to levy by distress and sale of the personal estate and effects or assets of such master or mistress respectively, such sum or sums of money as shall be necessary for the maintenance and clothing of such apprentice, and as shall also be necessary to reimburse to the churchwardens and overseers of the poor of such parish or place any sum or sums of money that shall have been reasonably expended by them for that purpose."

Sect. 7. "That it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division, or place where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship: provided always, that such person to whom such apprentice is intended to be assigned shall at the same time, by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself, herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture, on the part of the master or mistress of such apprentice to be done and per-

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32 Geo. 3, c. 57.

Provisions to take place on the death of the original master to extend to subsequent ones.

If no application be made, or the justices should not think fit that the apprenticeship should be continued, it shall be at an end.

Act to extend to such parish apprentices only as shall be living with the master.

Justices may order the necessary sums for maintenance and clothing of apprentices to be levied by distress.

Masters may assign over apprentices with the consent of two justices, &c.

1. *Statutes on Apprentices' Settlements.*

32 Geo. 3, c. 57.

Justices may discharge apprentices whose masters cannot employ or maintain them.

Not to extend to apprentices with whom more than five pounds shall be given.

No indorsement on parish indentures to be liable to stamp duty, and no other instrument to be charged higher than the duty on parish indentures.

Justices discharging any apprentice under the last recited act may order his clothes to be delivered up, and a sum not exceeding ten pounds to be paid the parish officers for placing him out again, &c.;

and may compel the parish officers to enter into recognizance to prosecute masters for ill-treatment of apprentices, &c.

formed; which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed, marked with the letters D. and E.; and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever, and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for the better regulation of parish apprentices."

Sect. 8. "That it shall and may be lawful for two justices of the peace of the county, city, town, riding, division, or place, where any such master or mistress shall live, on the application of such master or mistress requesting that any such apprentice may be discharged for the reasons aforesaid, to enquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

Sect. 9. "That nothing herein-before contained shall extend, or be construed to extend, to the indenture made on the binding of any apprentice by the churchwardens or overseers of the poor of any parish or place, or the major part of them, under and by virtue of the powers given to them by the statute made in the forty-third year of the reign of Queen Elizabeth, in the case of any such binding, where a larger sum than five pounds shall be given, but that such binding shall be subject and liable to the like rules and regulations as they would have been subject and liable to in case this act had not been made."

Sect. 10. "That no indorsement or indorsements on any parish indenture of apprenticeship herein-before mentioned, made or executed in pursuance of this act, shall be charged or chargeable with any duty imposed upon stamped vellum, parchment, and paper, but the same shall be, and are hereby declared to be exempted therefrom, and that no other instrument or instruments in writing herein-before mentioned shall be charged or chargeable with any higher duty than with the duty imposed or to be imposed on parish indentures of apprenticeship."

Sect. 11. "That in every case where any parish apprentice whatsoever shall be discharged from his apprenticeship by two justices, under and by virtue of the said last mentioned act, it shall and may be lawful for such two justices to order such master or mistress to deliver up to such apprentice his or her clothes and wearing apparel, and also to pay to such churchwardens and overseers of the poor of the parish or place to which such apprentice shall belong, some or one of them, a sum not exceeding ten pounds, to be applied by them, some or one of them, under the order of such justices, for the again placing and binding out such apprentice so discharged as aforesaid, or otherwise for his or her benefit as to such justices shall seem meet; and also to pay a sum, not exceeding five pounds, in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and in case such master or mistress shall refuse to pay the sum so ordered by the said justices to be paid as aforesaid, or either of them, or any part thereof, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such master and mistress, together with the reasonable expenses of such distress; and also, that it shall and may be lawful for such two justices, if they shall so think fit, to compel such churchwardens and overseers of the poor, some or one of them, to enter into a recognizance for the effectual prosecution by indictment of such master or mistress for such ill treatment of any such apprentice so discharged as aforesaid, and also to order that the costs and expenses of such prosecution shall be paid and discharged, or reimbursed to such person or persons entering into such recognizance as aforesaid, one moiety thereof out of the poor-rates of the parish or place to which such apprentice shall belong, and the

other moiety thereof out of the common stock of the county in which such parish or place shall lie; and in case the churchwardens and overseers of the poor of such parish or place for the time being shall refuse to pay such their moiety as aforesaid, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such churchwardens and overseers of the poor, any or either of them, together with the reasonable expenses of such distress."

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Sect. 12. "That in every case where any parish apprentice shall have been so discharged from any master or mistress as aforesaid, under and by virtue of the said last mentioned act, and such master and mistress shall have been convicted of such offence, in consequence of such prosecution by indictment as aforesaid, or shall have been found guilty thereof in any action brought at the suit of the party injured, it shall not be lawful for the churchwardens and overseers of the poor of any parish or place, or the major part of them, to bind any other apprentice upon such person; but that whenever such person ought or would be compellable to take a parish apprentice, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place, where such person shall reside, upon application made to them by the churchwardens and overseers of the poor of such parish or place, to order and direct that such person shall pay into the hands of such churchwardens and overseers of the poor, some or one of them, a sum not exceeding the sum of ten pounds, nor less than five pounds, for the purpose of binding out the child (intended to be bound) an apprentice, with the approbation of such two justices; and in case such person shall refuse to pay such sum as aforesaid, then that it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such person, together with the reasonable expenses of such distress: provided always, that it shall and may be lawful for such master or mistress as aforesaid, from whom any parish apprentice shall be discharged under and by virtue of the act, made in the twentieth year of the reign of King George the Second, to appeal against the order made for such discharge as aforesaid, and also against any such order made for his or her payment of any such sum or sums of money in consequence thereof as aforesaid, or for his or her payment of any sum or sums of money in lieu of a subsequent binding, under and by virtue of the provisions of this act, to the next general quarter sessions of the peace of the county, city, riding, division, or place, where, such orders, any or either of them, shall be made, and upon such appeal the said court of general quarter sessions shall finally determine the same, and, in their discretion, allow to all parties their reasonable costs; and no such distress for enforcing the payment of any such sum or sums of money as are last mentioned, shall be taken until after the general quarter session of the peace to be holden next after any such order as aforesaid shall be made, in case the person who is ordered to pay the same shall within seven days after notice given to him or her of such order being made, give notice to such churchwardens and overseers of the poor, some or one of them, of such intended appeal; and in case such person shall fail to appear in support of his appeal at such general quarter session, then the sum of forty shillings shall be added to the expenses of the distress before directed to be taken and levied accordingly."

Justices may order any master, convicted under the last recited act, when liable to take a parish apprentice, to pay to the parish officers a sum not exceeding ten pounds, nor less than five pounds, for the purpose of binding out the child, &c.

Masters may appeal to the quarter sessions, &c.

On notice of such appeal, no distress to be made till after the quarter sessions.

Forty shillings penalty for failing to support appeal.

Sect. 13. "That in all cases where any parish apprentice shall be discharged by two justices, under and by virtue of the said last mentioned act, from his or her apprenticeship, on account of any misdemeanor, mis-carriage, or ill-behaviour on the part of such apprentice, that it shall and may be lawful for such two justices, if they think proper, by warrant under their hands and seals, to punish such offender by commitment to the house of correction, there to remain and be corrected and kept to hard labour for a reasonable time, not exceeding three calendar months, as to such justices shall seem meet."

Apprentices discharged for ill behaviour may be sent to the house of correction.

Sect. 14. "That if any person shall be aggrieved by any matter or thing

Parties aggrieved

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32 Geo. 3, c. 57.

may appeal to the quarter sessions.

done, or omitted to be done, by any churchwarden or overseer of the poor, or by any of his Majesty's justices of the peace, or by any other person or persons whomsoever, under and by virtue of this act, besides such matters or things for which an appeal is herein-before specially given, it shall and may be lawful for such person or persons to appeal to the next general quarter sessions of the peace, where the same shall be heard and finally determined; and such court may award reasonable costs and expenses to either party before them."

Schedule referred to in this Act.

(A.) Form of Proviso to be added to the Covenant for Maintenance.

Provided always, that the said last mentioned covenant on the part of the said F. M. [the master], his executors and administrators, to be done and performed, shall continue and be in force for no longer time than for three calendar months next after the death of the said F. M., in case he, the said F. M., shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled, [Here set forth the title of the act.]

(B.)

(B.) Form of the Order of two Justices, directing a Parish Apprentice to continue with the Widow [or as the case may be] of his deceased Master, by indorsement on the Indenture or counterpart thereof; on which binding no more was paid than the sum for that purpose mentioned in this act.

County of } Whereas, F. M. [the master], within named, late of the parish of
 } in the said county, died on the day of being
within three calendar months now last past, we, two of his Majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A. M., widow [or as the case may be], of the said F. M., living with and being part of the family of the said F. M., at the time of his death, do hereby order and direct that A. P., the apprentice within-named, who was in the service and actual employment of the said F. M. at the time of his death, shall serve the said A. M. as such apprentice for the residue of the term of such apprenticeship within-mentioned, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled, An Act for the further Regulation of Parish Apprentices. Witness our hands, this day of .

I, the above-named A. M., do hereby declare that the above order is made at my request, and that I do accept the said A. P. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand the day and year above written.

(C.)

(C.) Form of the like Order, by a separate Instrument.

County of } Whereas it appears unto us, two of his Majesty's justices of the peace
 } for the said county, that A. P. [the apprentice], was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to F. M. [the master], late of the said parish , and that the said F. M. died on the day of , being within three calendar months now last past: now we, the said two justices, on the application and at the request of, &c. [then to the end, as before, mutatis mutandis.]

(D.)

(D.) Form of the Assignment of such a Parish Apprentice, with the Consent of two Justices, by Indorsement on the Indenture or Counterpart.

County of } BE it remembered, that the within-named F. M. [the master], by and
 } with the consent and approbation of I. P. and K. P. two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign A. P. the apprentice within named, unto N. M. [the new master], to serve him during the residue of the term within-mentioned; and that he, the said N. M., doth hereby agree to accept and take the said A. P. as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and

1. *Statutes on Apprentices' Settlements.*

32 Geo. 3, c. 57.

We, two of his Majesty's justices of the peace
above-mentioned, do consent thereto. Wit-
ness our hands, this day of .

(E.)

The 42 Geo. III. c. 46, intituled "An Act to require overseers and guardians of the poor to keep a register of the several children who shall be bound or assigned by them as apprentices; and to extend the provisions of an act passed in the twentieth year of the reign of his present Majesty to the binding of apprentices by houses of industry, or establishments for the poor, which have been authorized so to do by subsequent acts," enacts, "That the overseers of the poor of every parish, township, or place appointed by virtue of the said recited act, passed in the forty-third year of the reign of Queen Elizabeth, shall, from and after the first day of June, and they are hereby required to provide and keep a book or books, at the expense of the said parish, township, or place, and to enter or cause to be entered therein the name of every child who shall be bound out by them respectively as an apprentice, together with the several other particulars, in manner and form required by this act, according to the schedule hereunto annexed; and every such entry, when made in the said register, shall be produced and laid before the two justices of the peace, who shall signify their assent to the indenture of apprenticeship of every such child at the time when such indenture shall be laid before such justices for their assent, as required by the said recited act; and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule hereunto annexed."

42 Geo. 3, c. 46.
Overseers of the
poor shall keep
a book for enter-
ing the name of
every apprentice
bound out by
them, and each
entry shall be
signed by two jus-
tices, according to
the form in the
schedule.

Penalty for no providing such book, or neglecting to make such entries therein, &c., not exceeding five pounds, leviable by distress, &c.

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42 Geo. 3, c. 46.

Books may be inspected, and shall be deemed evidence.

sale shall be returned upon demand to the owner or owners of such goods and chattels, after deducting the costs and charges of making, keeping, and selling such distress; and such penalties and forfeitures shall be applied for the use of the poor of the parish, township, or place, for which such offender or offenders shall be overseer or overseers; and in case sufficient distress cannot be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justices, by warrant under their hands and seals, and they are hereby required to commit every such offender to the common gaol or house of correction of the county, city, or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding one calendar month, unless such penalties and forfeitures shall be sooner paid and satisfied."

Sect. 3. "That it shall and may be lawful for any person or persons at all seasonable hours to inspect such book or books in the hands of the said overseer or overseers, and to take a copy of such entry in such book or books, upon payment of the sum of sixpence, except in case of any of his Majesty's justices of the peace acting in and for the said county, who shall be entitled at all such times to inspect such book gratis; and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed."

Sect. 4. "That the justices of the peace before whom any person shall be convicted by virtue of this act shall and may cause the conviction to be drawn up in the following form; (*videlicet*)

Form of conviction.

BE it remembered, that on the _____ day of _____, in the year of our Lord _____, A. B. is convicted before us two of his Majesty's justices of the peace for the [specifying the offence, and the time and place when and where committed, as the case may be] contrary to an act made in the forty-second year of the reign of King George the Third, intituled, [here set forth the title of this act.] Given under our hands and seals the day and year above mentioned."

Sect. 5. "That whenever any such apprentice shall be assigned or bound over to any other master or mistress by virtue of an act, passed in the thirty-second year of the reign of his present Majesty, intituled an act for the further regulation of parish apprentices, then and in every such case the overseer or overseers, party or parties to the assignment of such apprentice, shall insert the name and residence of the master or mistress to whom such apprentice shall be assigned or bound over as aforesaid, together with the other particulars, in the book or books herein directed to be provided and kept by such overseer or overseers; and for non-performance thereof, every such overseer or overseers shall be liable to the pains, penalties, and forfeitures incurred by this act, in like manner as if such apprentice had been originally bound to such master or mistress."

Sect. 6. And whereas by different acts of parliament the like powers are given to certain persons therein named for binding out parish apprentices as are given to the overseers of the poor be it therefore enacted, that such several persons shall be subject to the like pains, penalties and forfeitures for non-compliance with the several provisions and directions in this act contained, for registering any parish apprentice bound out or assigned by them respectively, to which overseers of the poor are subject and liable by virtue of this act for noncompliance with such provisions and directions."

Sect. 7. "That if any person or persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, it shall and may be lawful to and for such person or persons to appeal to the justices at the first general quarter sessions of the peace to be holden for the county or place where the cause of appeal shall arise, within four calendar months next after the cause of appeal shall have arisen, on giving to the person or persons appealed against ten days' notice of such appeal and of the matter thereof; and the justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to grant such costs and expenses to either party as to them shall seem reasonable."

When apprentices shall be assigned under 32 Geo. 3, c. 57, a like entry thereof shall be made in the said book.

This act extended to persons having like powers as overseers.

Appeal may be made to quarter sessions.

6. Of Settlement by Apprenticeship.

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Sect. 8. "And whereas by an act passed in the twentieth year of his present Majesty the powers which were given by several preceding acts of parliament to bind poor children apprentices are, by the said act of the twentieth year of his Majesty, extended as to the power of compelling persons to receive and provide for such poor children as should be appointed to be bound apprentices to them in pursuance of the said prior acts: and whereas since that time several acts have passed by which houses of industry, or establishments for the poor, have been authorized to bind apprentices; and doubts have arisen whether the powers and provisions in the said act of the twentieth of his Majesty will extend to the case of apprentices so bound out under the authority of such subsequent acts; be it therefore enacted by the authority aforesaid, that the several powers and provisions in the said recited act of the twentieth of his Majesty contained, shall extend and are hereby extended, and shall have full effect, to poor children bound apprentices under the authority of any acts passed since the said recited act, in the same manner as if such acts had passed prior to the said recited act of the twentieth of his Majesty."

1. Statutes on Apprentices' Settlements.

42 Geo. 3, c. 46.
The powers of 20 Geo. 3, c. 36, shall extend to poor children bound apprentices under the authority of any subsequent act.

FORM OF THE REGISTER.

Number.	
Date of Indenture.	
Name of the Apprentice.	
Sex.	
Age.	
His or her Parent's name.	
Their residence.	
Name of persons to whom bound or assigned, as the case may be.	
His or her Trade.	
His or her Residence.	
Term of the Apprenticeship or Assignment.	
Apprentice or Assignment Fee.	
Overseers, Parties to the Indenture or Assignment.	
Magistrates assenting.	(To be signed by themselves.)

1. *Statutes on Apprentices' Settlements.*

50 Geo. 3, c. 108.

51 Geo. 3, c. 80.

Indentures and certificates heretofore signed by two persons only, acting as churchwardens, &c. valid.(a)

The 50 Geo. III. c. 108, relates to apprentices in fishing vessels.

The 51 Geo. III. c. 80, intituled, "An Act to render valid certain Indentures for the Binding of Parish Apprentices." "Whereas by an act passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled, 'An Act for the Relief of the Poor,' it is enacted, 'That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in Easter week, or within one month after Easter, in the manner therein directed, shall be overseers of the poor of the same parish; and that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of two justices of the peace, to bind the children of such parents as shall not by the said churchwardens and overseers, or the greater part of them, be thought able to maintain their children, to be apprentices: and whereas in divers small parishes two persons only have been annually appointed to act in the capacity of churchwardens as well as overseers of the poor: and whereas divers indentures for the binding of parish apprentices, and certificates of the settlements of poor persons, have been executed and signed by such two persons, purporting to be the churchwardens and overseers of such parishes; but by reason that the said indentures and certificates have not been signed by distinct persons as churchwardens, and other distinct persons as overseers, such indentures and certificates have been or may be deemed to be void; be it therefore enacted, that all indentures for the binding of parish apprentices, and all certificates of the settlement of poor persons, which have been heretofore executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also such indentures and certificates as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens, and distinct persons as overseers of the poor, according to the said recited act, any thing therein or in any other act contained to the contrary thereof notwithstanding."(a)

The act not to affect prior decisions.

Sect. 2. "Provided always, that nothing in this act contained shall extend to do away or alter any decision which may have taken place in any court of law respecting the binding of any parish apprentice, or the settlement of any poor person before the passing of this act."

Rex v. St. Margaret's, Leicester, 2 B. & Ald. 200, post. This act extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer.

54 Geo. 3, c. 96, repeals 5 Eliz. c. 4, s. 31, which prohibited persons who had not served a seven years' apprenticeship from setting up or being employed to work in a trade.

The 54 Geo. III. c. 96, intituled, "An Act to amend an Act passed in the fifth year of Queen Elizabeth, intituled, 'An Act containing divers orders for Artificers, Labourers, Servants of Husbandry, and Apprentices.'" "Whereas by an act passed in the fifth year of the reign of her late Majesty Queen Elizabeth, intituled, 'An Act containing divers Orders for Artificers, Labourers, Servants of Husbandry, and Apprentices,' it was enacted, That from and after the first day of May then next coming, it should not be lawful to any person or persons, other than such as did then lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use or exercise any craft, mystery, or occupation then used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at least as an apprentice; nor to set any person on work in such mystery, art, or occupation, not being a workman at that day, except he shall have been apprentice as aforesaid, or else having served as an apprentice as aforesaid shall become a journeyman, or hired by the year, upon pain that every person willingly offending, or doing the contrary, shall forfeit and lose for every default forty shillings for every month: and whereas it is expedient

(a) This enactment obviates the objections to the settlement taken in *Rex v. All Saints, Derby*, 13 East, 143; and was suggested by the decision in that

case, per Bayley, J., 2 B. & Ald. 202. And see construction of the acts in *Rex v. St. Margaret's, Leicester*, 2 B. & Ald. 200 (post, *Parish Apprentices*).

that so much of the said act should be repealed: be it enacted, that so much of the said recited act shall be and the same is hereby repealed, and declared to be null and void to all intents and purposes whatsoever."

Sect. 2. "And whereas by the said statute divers rules and regulations were enacted respecting the *qualification of persons entitled to take* and become apprentices, and the term of years for which such apprentices should be bound, and as to the mode of binding such apprentices; and it was also enacted by the said statute, that all indentures, covenants, promises, and bargains, of and for the having, taking, or keeping of any apprentice, otherwise thereafter to be made or taken, than is by the said statute limited, ordained, and appointed, should be clearly void in the law to all intents and purposes; and that every person that should from thenceforth take or newly retain any apprentice contrary to the tenor and true meaning of the said act, should forfeit and lose for every apprentice so by him taken the sum of ten pounds: and whereas it is expedient that so much of the said recited act should be repealed; be it therefore enacted, that so much of the said recited act shall be and the same is hereby repealed; and that it shall and may be lawful *for any person to take*, or retain, or become an apprentice, though not according to the provisions of the said act; and that indentures, deeds, and agreements in writing entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said act as is herein last above recited notwithstanding."

Sect. 3. "That any justice or justices of the peace may hear and determine any complaints that may arise respecting any apprenticeships, in like manner as if they had been made under the act hereby in part repealed."

Sect. 4. "That this act, or any thing herein contained, shall not extend or be construed to extend to defeat, alter, or prejudice the custom and order of the city of London concerning apprentices, or the ancient custom, usages, privileges, or franchises of the said city, or of any other city, town, corporation, or company lawfully constituted, or the citizens and freemen thereof; or any bye-law or regulation of any corporation or company lawfully constituted."

The 54 Geo. III. c. 107, intituled, "An Act to render valid certain Indentures for the Binding of Parish Apprentices, and Certificates of the Settlement of Poor Persons," after reciting that churchwardens sworn into office for a *whole parish* have acted as churchwardens of *townships* within such parish, without being sworn to act in the latter capacity, enacts, "That all indentures for the *binding of poor apprentices*, and all certificates of the settlements of poor persons, which have been heretofore signed and executed, or which shall hereafter be signed and executed by a person or persons, who at the time of his or their signing and executing such indenture, or certificate of settlement, *acted as churchwarden* or churchwardens, chapelwarden or chapelwardens, of the *township, hamlet, or chapelry*, binding such poor apprentice, or granting such certificate of settlement, shall be deemed and taken to be as good, valid, and effectual as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: provided always, that such person or persons shall have been *duly sworn* into the office of churchwarden of the *parish* wherein the township, hamlet, or chapelry binding such poor apprentice, or granting such certificate, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry."

Sect. 2. "That all indentures for the binding of poor apprentices, and all certificates of the settlement of poor persons, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any *township, hamlet, chapelry, or place*, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual as if the said indentures and certificates had been signed and exe-

1. Statutes on Apprentices' Settlements.

54 Geo. 3, c. 96.
Repeals 5 Eliz. c. 4, s. 25, 30, 41, as to qualification of persons to take and become apprentices, and enables *all* persons to do so.

Justices may determine complaints.

Proviso for customs of London, &c.

54 Geo. 3, c. 107.
Indentures and certificates of settlements valid, although churchwardens, &c. not sworn in townships, &c.

Proviso.

Indentures and certificates valid, if executed by overseers of the poor of any township, &c.

1. *Statutes on Apprentices' Settlements.*54 Geo. 3, c. 107.
Proviso for settlements.

55 Geo. 3, c. 184.

cuted by such overseers and the churchwardens of the *parish* wherein such township, hamlet, chapelry, or place is situate, or the major part of them."

Sect. 3. "That nothing herein contained shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act." See also 56 Geo. III. c. 139, (*post*, 475).

The 55 Geo. III. c. 184, "An Act for Repealing the Stamp Duties on Deeds, &c. &c. and for Granting other Duties in lieu thereof," passed 11th July, 1815, contains the following Schedule of Duties and Exemptions on *Indentures of Apprenticeships*. (a)

SCHEDULE. PART I.		Duty.		
		£.	s.	d.
APPRENTICESHIP and CLERKSHIP.—Indenture or other instrument or writing containing the covenants, articles or agreements, for or relating to the service of any <i>apprentice</i> , (b) clerk, or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade or employment whatsoever; <i>except articles of clerkship to attornies and others, hereinafter specifically charged.</i>				
If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned or conveyed, or be secured to be paid, given, assigned or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk or servant, or both the money and value of such other matter or thing shall not amount to 30 <i>l.</i>		1	0	0
If the same shall amount to 30 <i>l.</i> and not amount to 50 <i>l.</i>		2	0	0
If the same shall amount to 50 <i>l.</i> and not amount to 100 <i>l.</i>		3	0	0
If the same shall amount to 100 <i>l.</i> and not amount to 200 <i>l.</i>		6	0	0
If the same shall amount to 200 <i>l.</i> and not amount to 300 <i>l.</i>		12	0	0
If the same shall amount to 300 <i>l.</i> and not amount to 400 <i>l.</i>		20	0	0
If the same shall amount to 400 <i>l.</i> and not amount to 500 <i>l.</i>		25	0	0
If the same shall amount to 500 <i>l.</i> and not amount to 600 <i>l.</i>		30	0	0
If the same shall amount to 600 <i>l.</i> and not amount to 800 <i>l.</i>		40	0	0
If the same shall amount to 800 <i>l.</i> and not amount to 1,000 <i>l.</i>		50	0	0
And if the same shall amount to 1,000 <i>l.</i> or upwards		60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress; if the indenture or other instrument shall not contain more than 1,080 words		1	0	0
And if the same shall contain more than that quantity		1	15	0
APPRENTICESHIP and CLERKSHIP.—Indenture, or other instrument or writing, containing the covenants, articles, or agreements for or relating to the service of any such apprentice, clerk or servant as aforesaid, who shall be put or placed to or with a <i>new master or mistress</i> , either by assignment, transfer or turn-over, or upon the death, absence or incapacity of the former master or mistress, or otherwise; or any writing whatever, whereby any such assignment, transfer or turn-over may be effectuated or ascertained.				
Where there shall be any such valuable consideration as aforesaid, moving to the new master or mistress, exclusive of any part of the consideration to the former master or mistress, which may be returned, or given, or transferred to the new master or mistress		Such and the like duty, in proportion to the amount or value of such new consideration only, as is before charged on any original indenture of apprenticeship.		
And where there shall be no such new consideration; if the indenture or other instrument or writing shall not contain more than 1,080 words				
		1	0	0

(a) See 8 Anne, c. 9, s. 32 to 46 and see 18 Geo. II. c. 22, s. 23, 24 (*ante*, 453); 32 Geo. III. c. 57, s. 10 (*ante*, 457); and 22 Geo. II. c. 45, s. 1 (*ante*, 466); *Chitty's Stamp Laws and Notes*, p. 129 to 133; and *post*, 479; (b) See *ante*, 455.

SCHEDULE.	Duty.	1. Statutes on Apprentices' Settlements.
APPRENTICESHIP and CLERKSHIP—continued.	£. s. d.	55 Geo. 3, c. 184.
And if the same shall contain more than that quantity	1 15 0	
And where there shall be <i>duplicates</i> , or <i>two parts</i> , of any such indenture or other instrument or writing, relating to any such apprentice, clerk or servant as aforesaid; each part shall be charged with the duty before mentioned, in all cases where the same shall not exceed thirty-five shillings; and where the same shall exceed that sum, only one part shall be charged with the said <i>ad valorem</i> duty, or duty in proportion to the consideration, and the other part shall be charged with a duty of	1 15 0	
Note.—And the part bearing the <i>ad valorem</i> or higher duty shall belong to and be kept by the apprentice, clerk or servant, or some person on his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out, by assignment or otherwise, the part bearing the <i>ad valorem</i> duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk or servant, or some person on his or her behalf; and in each of the said cases, the other part, bearing the lower duty hereby charged thereon, shall belong to and be kept by the original master or mistress, or the new master or mistress, as the case may be; and the same shall be respectively received in evidence accordingly.		
<i>Exemptions from the preceding and all other Stamp Duties. (a)</i>		
Indentures or other instruments for placing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the act of the thirty-second year of his Majesty's reign, for the further regulation of parish apprentices. (a)		
And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity. (a)		

The 56 Geo. III. c. 139, enacts, "That from and after the first day of October, in the year of our Lord one thousand eight hundred and sixteen, before any child (b) shall be bound apprentice to the overseers of the poor of any parish, township, or place, such child shall be carried before two justices of the peace (c) of the county, riding, division, or place, wherein such parish, township, or place, shall be situate, who shall enquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child; and such justices shall particularly enquire and consider whether such person or persons reside, or have his, her, or their place or places of business within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit in the judgment of such justices that such child should be placed

56 Geo. 3, c. 139.
How parish apprentices shall be bound.

Justices to enquire into certain matters.

(a) See *ante*, 455, note (b); and 32 Geo. III. c. 57, s. 10, *ante*, 466. "that no parish apprentice can be bound longer than the age of twenty-one," (*ante*, 458).
(b) Not applicable to adults, *Rex v. St. John, Bedwardine*, 2 Nev. & Man. 86; and the 18 Geo. III. c. 47, enacts, (c) Construction, see 1 Bar. & Adol. 916.

1. *Statutes on Apprentices' Settlements.*

56 Geo. 3, c. 139.
May examine the
parents.

In what case justices to make an order that overseers bind the child apprentice.

Proviso as to employing apprentice out of the county where bound.

Indenture to be allowed by two justices of the county into which apprentice is to be bound, as well as by two justices of the county from which he is bound.

Notice to overseers before indenture allowed.

Allowance by county magistrates valid in places having exclusive jurisdiction.

apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly enquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith; and such justices shall also enquire into the circumstances and character of such person or persons; and if such justices shall, upon such examination and enquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order, declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place to which such child shall belong shall be at liberty to bind such child apprentice accordingly: which order shall be delivered to such overseer or overseers, as the warrant for binding such child apprentice as aforesaid, and such order shall be referred to by the date thereof, and the names of the said justices in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto: provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of London; in which case it shall be lawful for the justices who shall authorize the apprenticing of such child to make a special order for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing or having an establishment in trade at a greater distance than forty miles from the parish or place to which such child shall belong."

Sect. 2. "That in all cases where the residence or establishment of business of the person or persons to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situate, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the said first day of October shall be allowed as well by two justices of the peace for the county or district within which the place by the officers of which such such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve: provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture, in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice."

Sect. 3. "That the allowance of two justices of the peace for the county, within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction."

Sect. 4. "And whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong; be it enacted, that the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated."

Sect. 5. "That no settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made, and such allowances of such indenture of apprenticeship shall be signed as herein-before directed."

Sect. 6. "That in case any overseer or overseers shall bind an apprentice to any person or persons, without having obtained such order and such allowances as hereinbefore required, and in case any person or persons shall receive any such apprentice as so bound, without such order and allowances having been first obtained, the said overseer or overseers, and the said person or persons, shall each respectively forfeit the sum of ten pounds for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered."

Sect. 7. "That from and after the said first day of October, it shall not be lawful for any parish officers to bind out any child as *parish* apprentice, until such child shall have attained the age of nine years; any thing in any act or acts of parliament to the contrary notwithstanding."

Sect. 8. "That if any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall, after the said first day of October, remove his, her, or their residence or establishment of business out of the same county, or forty miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall, at least fourteen days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate; and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled, and which churchwardens and overseers, and also the master or masters, mistress or mistresses, of such apprentice, shall cause such apprentice to appear before two of his Majesty's justices of the peace for the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons, or be discharged therefrom, or bound or assigned over to any other person or persons; and shall thereupon make order, either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them in their discretion shall seem meet; and if they shall see fit, shall also require the person or persons so giving notice of removal, to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expense of assigning or binding such apprentice to any other person, to be approved by the said justices: and the person or persons to whom such apprentice shall be so bound or assigned, shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound; and in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such apprentice, without giving such notice as aforesaid, every person so offending shall forfeit the sum of ten pounds for every such apprentice, to the churchwardens and overseers of the poor of the parish, township, or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township, or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

1. Statutes on Apprentices' Settlements.

54 Geo. 3, c. 139.

Distance to which apprentices bound not limited to cities which are counties of themselves.

No settlement gained unless directions complied with.

Overseers binding apprentices contrary hereto.

Penalty.

Children not to be bound till they have attained nine years.

In cases of masters' removal, &c., how apprentices shall be disposed of.

Notice of removal.

Masters, &c. removing and taking apprentices without order. Penalty.

1. *Statutes on Apprentices' Settlements.*

52 Geo. 3, c. 139.

Provisions of 32 Geo. 3, c. 57, enforced with respect to assigning or discharging apprentices.

Discharging apprentices without consent of justices.

Indentures not valid unless approved by two justices.

Penalties how recovered.

Justices empowered to dispose of penalties.

Recovery of penalties.

Sect. 9. "And whereas it may be expedient that those to whom parish apprentices are bound or assigned, should be empowered to place out or assign over such apprentices to others, and it is proper that such placing out or assignments should in all instances be under the inspection and control of the magistrates; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices; and it is inexpedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentice without the consent of such justices: be it therefore enacted, that from and after the first day of October, in the year one thousand eight hundred and sixteen, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices as is directed in an act passed in the thirty-second year of the reign of his present majesty, intituled, *An act for the further Regulation of Parish Apprentices*; and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid."

Sect. 10. "That any person or persons who, after the first day of October, in the year one thousand eight hundred and sixteen, shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice without such consent as aforesaid, shall forfeit a sum not exceeding ten pounds for every apprentice so transferred."

Sect. 11. "And whereas the salutary provisions enacted by an act passed in the forty-third year of the reign of her majesty Queen Elizabeth, intituled, *An act for the Relief of the Poor*, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace: be it further enacted, that after the said first day of October, no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act."

Sect. 12. "That all penalties and forfeitures hereby imposed for any offence against this act, shall and may be recovered by information before any two justices of the peace of the county or district where such offence shall be committed."

Sect. 13. "That it shall and may be lawful to and for the justices before whom any such penalty shall be recovered to direct such penalty, after deducting the necessary costs and charges attending any information and the proceedings thereon, to be paid, applied, and distributed, either to the person or persons giving information of the offence for which such penalty shall be incurred, or to the overseer of the poor of the parish or township in which such offence shall have been committed, or by the officers whereof such apprentice shall have been bound, for the use of the poor of such parish or township, or in the binding of the apprentice, respecting whom such offence shall be committed, to any other person, or to be distributed and applied for any one or more of such purposes as to such justices shall seem meet."

Sect. 14. "That in case of non-payment of any penalty hereby imposed, the same shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of the justices before whom such offender shall have been convicted, or of any other two justices of the peace of the same county or district; and for want of such distress, such offender shall be committed to the common gaol or house of correction for any period not less than one nor more than six months, to be appointed by the justices before whom such offender shall be convicted."

Sect. 15. "That the conviction of all offences against this act shall be in the form following; that is to say,

1. Statutes on Apprentices' Settlements.

52 Geo. 3, c. 139.

Form of conviction.

Be it remembered, that on the _____ day of _____ in the year of our Lord _____ is convicted before us _____ of his Majesty's justices of the peace for the county of _____ upon the information of _____ that [here state the offence] contrary to the form of the statute passed in the fifty-sixth of the reign of his Majesty King George the Third, intituled, An Act to regulate the binding of parish apprentices, and for which offence we do adjudge that the said _____ shall forfeit and pay the sum of _____ to be paid and applied as follows [here state the application of the penalty], and in case such penalty shall not be paid by the said _____ or levied by distress upon goods and chattels, within _____ days from the date of this conviction, we adjudge that the said _____ shall be imprisoned in _____ for the space of _____ Given under our hands and seals the day and year first above mentioned."

Sect. 16. "That in case any person convicted for any offence against this act shall not pay the penalty imposed by such conviction within one calendar month next after such conviction shall take place, it shall be lawful to and for the justices making such convictions, or for any two other justices of the county or district, to issue their warrant for the apprehending and imprisoning of such offender, notwithstanding such offender may have goods or chattels whereby such penalty might have been levied."

Not paying penalty.

Imprisonment.

Sect. 17. "That any person or persons who shall be dissatisfied with any act done by any justice or justices of the peace in the execution of this act, may appeal against the same to any court, or general or quarter sessions to be holden for the county within which such act shall have been done, within three calendar months after the fact so complained of, upon giving notice in writing to such justice or justices, and also to the person or persons who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and in case such appeal shall be against any conviction, entering into a recognizance, with two sufficient sureties, before any justice of the peace of the county or district within which such conviction shall have taken place, to appear at such general or quarter sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon; and that it shall and may be lawful to and for the justices at such sessions to hear and determine the matter of such appeal, and to award costs therein, as they in their discretion shall think fit; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same."

Appeal.

Sect. 18. "That the provisions and penalties herein contained, respecting overseers of the poor, shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor; and that all the provisions herein mentioned and contained respecting any parish or place, shall extend to any incorporated or other district for the maintenance of the poor; and that the officers of any such district, having power to bind apprentices, shall be subject to all the rules, regulations, and penalties herein mentioned and contained respecting overseers of the poor."

Power of overseers extended to churchwardens.

The 3 & 4 W. IV. c. 63, s. 1, 2, 3, 4; and 4 & 5 W. IV. c. 76, s. 61, explain and further regulate parish apprentices, *post*, 483, 484.

The 1 & 2 Geo. IV. c. 32, intituled, An Act for declaring valid certain indentures of apprenticeship, and certificates of settlements of poor persons in England, enacts, "That all indentures for the binding of parish apprentices, and certificates of the settlement or settlements of poor persons, which have been, *previous* to the passing of this act, executed or signed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in England, for which *two* churchwardens or chapelwardens had formerly been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures or certificates had been executed by one or more church-

1 & 2 Geo. 4, c. 32.

Certain indentures and certificates of settlement declared valid.

1. *Statutes on Apprentices' Settlements.*

1 & 2 Geo. 4, c. 32.

Proviso for decisions already made.

3 Geo. 4, c. 126.

No person to gain a settlement by renting tolls, or by residence in toll-houses.

4 Geo. 4, c. 25, repeals 37 Geo. 3, c. 73, s. 4. (a)

After Jan. 1, 1824, the number of apprentices proportioned to tonnage as herein mentioned.

Time of apprenticeship.

Enrolled.

Proviso for acts by which vessels are required to have apprentices on board.

Apprentices exempted from impress.

warden or chapelwarden, churchwardens or chapelwardens, legally appointed; any law, statute, usage, or custom to the contrary notwithstanding.

Sect. 2. "Provided always, that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures or certificates, or to alter, impeach, or affect the settlement of any person for whose removal any order of justices shall have been duly made previous to the passing of this act, or to legalize or make valid any indentures or certificates to be signed or executed as hereinbefore mentioned after the passing of this act."

The 3 Geo. IV. c. 126, s. 51, enacts, "That no collector or person renting such tolls, or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person, shall thereby gain a settlement in any parish or place whatsoever; and that no tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same, nor any person in respect of such tolls or toll-house, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial levy whatsoever." (See 4 Geo. IV. c. 95, s. 31, *post*, 482.)

The 4 Geo. IV. c. 25, (a) intituled, "An act for regulating the number of apprentices to be taken on board British *merchant vessels*; and for preventing the desertion of seamen therefrom," enacts, "that so much of the 37 Geo. III. c. 73, as requires the master of any ship trading to his Majesty's colonies and plantations in the West Indies to have on board an apprentice or apprentices, shall be and the same is hereby repealed."

Sect. 2. "That from and after the first day of January, one thousand eight hundred and twenty-four, all and every master and masters of any merchant ship or merchant ships, exceeding the burthen of eighty tons, shall have on board his or their ship or ships, at the time of such ship or ships clearing out from any port of the united kingdom called Great Britain, one apprentice or apprentices, in the following proportion to the number of tons of her admeasurement, according to the certificate of registry; that is to say, for every ship or vessel exceeding eighty tons and under two hundred tons, one apprentice at least; for every ship or vessel of two hundred tons and under four hundred tons, two apprentices at least; for every ship or vessel of four hundred tons and under five hundred tons, three apprentices at least; for every ship or vessel of five hundred tons and under seven hundred tons, four apprentices at least; for every ship or vessel of seven hundred tons and upwards, five apprentices at least: who shall, at the period of being indentured, respectively be under the age of seventeen years: provided that every apprentice so to be employed on board any ship or vessel, as above described shall be duly indentured for at least four years; and the indenture or indentures of every such apprentice shall be duly enrolled with the collector and comptroller at the custom house of the port from whence any such ship or vessel shall first clear out after the execution of such indenture or indentures."

Sect. 3. "That nothing in this act contained shall extend or be construed to extend to alter or in anywise affect any act now in force, and not amended or repealed by this act, whereby any ships or vessels are required to have on board apprentices, and that such apprentices as shall be on board any ships or vessels conformably to the rules and regulations of any such act shall be counted, deemed and reckoned in the number required by this act."

Sect. 4. "That every apprentice so enrolled shall be and is hereby exempted from service in his Majesty's navy, until he shall have attained the age of twenty-one years, provided he is regularly serving his time either with his first master or ship owner, or some other master or ship owner to whom his indentures shall have been regularly transferred; and all and every owner or owners, or master or masters, neglecting to enrol such in-

(a) This act was repealed by 6 Geo. IV. c. 105, but revived by 7 Geo. IV. c. 48, s. 50.

denture or indentures as aforesaid, or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness or other unavoidable cause, to be certified in the log book, after the vessel shall have cleared outwards on the voyage upon which such ship or vessel may be bound, shall for every such offence forfeit and pay the sum of ten pounds, to be paid in manner following,—that is to say, one moiety by the owner or owners of such ship or vessel, and the other moiety by the master or masters thereof, to be levied, recovered and applied in manner hereinafter mentioned."

Sect. 5. "That every person to whom such apprentice shall have been bound, may employ him at any time in any vessel of which such person may be the master or owner, and may also with the consent of such apprentice, if above the age of seventeen, and if under that age, with the consent of his parents or guardians, transfer the indentures of such apprentice, by endorsement thereon, to any other person who may be the master or owner of any registered ship or vessel."

Sect. 6. "That no stamp duty shall be charged on any such transfer by endorsement."

The 4 Geo. IV. c. 29, intituled, *An Act to increase the power of magistrates in cases of apprenticeships.* "Whereas by an act made in the twentieth year of the reign of His Majesty King George the Second, intituled, *An act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices,* it is, among other things, enacted and provided, that it shall and may be lawful to and for any two justices of the peace, upon any complaint or application by any apprentice put out by the parish, or any other apprentice, upon whose binding out no larger sum than five pounds of lawful British money was paid, touching or concerning any misuse, refusal of necessary provision, cruelty or other ill treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices, at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint, and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved,) the said justices may discharge such apprentice, by warrant or certificate under their hands and seals, for which warrant or certificate no fees shall be paid; and it is also enacted, that it shall and may be lawful to and for such justices, upon application or complaint made upon oath by any master or mistress against any such apprentice, touching or concerning any misdemeanour, miscarriage or ill behaviour in such his or her service, (which oath such justices are hereby empowered to administer,) to hear, examine and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging such apprentice in manner and form before mentioned: and whereas by another act made in the thirty-third year of the reign of his late Majesty King George the Third, intituled *An act to authorize justices of the peace to impose fines upon constables, overseers, and other peace and parish officers, for neglect of duty, and on masters of apprentices for ill usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates,* it is enacted, That it shall and may be lawful for any two or more of his Majesty's justices of the peace, assembled at any special or petty sessions of the peace, upon complaint made to them upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township, or otherwise, (provided that not more than the sum of ten pounds be paid upon the binding of such apprentice,) against his or her master or mistress, of any ill usage of such apprentice by such master or mistress, (such master or mistress having been duly summoned to appear and answer such charge or complaint,) to impose, upon conviction, any reasonable fine or fines not exceeding the sum

1. *Statutes on Apprentices' Settlements.*

4 Geo. 4, c. 25.

Masters not enrolling indentures, &c.

Penalty, ten pounds.

Apprentice may be employed in any ship of which his master is captain or owner, and may be transferred.

No stamp on transfers.

4 Geo. 4, c. 29.

Recited acts to extend to apprentices bound out at no larger sum than twenty-five pounds.

1. *Statutes on Apprentices' Settlements.*

4 Geo. 4, c. 29.

In what case justices may order premium to be refunded.

If not refunded,

Levied under warrant.

If not sufficient goods,

Imprisonment.

20 Geo. 2, c. 19,
33 Geo. 3, c. 55,
continued.
(Exception.)

4 Geo. 4, c. 34.

4 Geo. 4, c. 95.
Toll collectors,
&c., residing in
any house erected
by the trustees,
not to gain a
settlement.

6 Geo. 4, c. 16.
Apprentices
discharged from

of forty-shillings upon such master or mistress respectively, as a punishment for such ill usage; and by warrant under the hands and seals of any two or more of such justices assembled at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any,) after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offender or offenders. And whereas it is expedient that the provisions of the said act should be extended to apprentices upon whose binding out a larger sum than five pounds or ten pounds respectively, as mentioned in the said acts, was paid: be it therefore enacted, that from and after the first day of August, one thousand eight hundred and twenty-three, the provisions of the said recited acts, so far as the same relate to apprentices, shall extend and be deemed and construed to extend to all apprentices, upon whose binding out no larger a sum than twenty-five pounds of lawful British money was or shall be paid; any thing contained in the said acts, or either of them, to the contrary thereof in anywise notwithstanding."

Sect. 2. And be it further enacted, that from and after the first day of August, one thousand eight hundred and twenty-three, it shall and may be lawful for any two or more of his Majesty's justices of the peace, in any case where they shall direct any apprentice or apprentices to be discharged under and by virtue of the said recited acts or of this act, to take into consideration the circumstances under which such apprentice or apprentices shall be so discharged, and to make an order upon the master or mistress of such apprentice or apprentices to refund all or any part of the premium or premiums which may have been or shall be paid upon the binding or placing out of such apprentice or apprentices, as such justices in their discretion shall see fit; and in case any sum or sums of money which shall be so ordered to be refunded by such master or mistress, shall be neglected to be paid to the person or persons directed in any such order to receive the same, it shall and may be lawful for such two or more justices, in petty sessions, by warrant under their hands and seals, to levy the same upon the goods and chattels of such master or mistress, with the cost and charges of levying such distress, rendering the overplus of the sale of such goods and chattels, upon demand, to such master or mistress; and in case there shall not be sufficient goods and chattels whereon to levy the same, then it shall and may be lawful for such justices to commit such offender or offenders to the house of correction for any time not exceeding two months, unless the sum or sums ordered to be refunded, with all costs, shall be sooner paid and satisfied."

Sect. 3. "And be it further enacted, that the said recited acts, and all and every of the powers and provisions thereof (save and except such parts thereof as are varied, altered or repealed), shall be as good, valid and effectual, for carrying this act into execution as if the same had been repeated in this act."

The 4 Geo. IV. c. 34, is "an act to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers and others."

The 4 Geo. IV. c. 95, s. 31, enacts, "That no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, and no apprentice or servant of any such collector or receiver, shall thereby gain a settlement in any parish or place; and that no tolls or penalties for overweight to be taken at any house or weighing machine erected or to be erected, or adjoining to any turnpike-road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial rate or levy whatsoever." (See 3 Geo. IV. c. 126, *ante*, 480.)

By the 6 Geo. IV. c. 16, s. 49, it is enacted "That where any person shall be an apprentice to a bankrupt at the time of issuing of the commission

against him, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound to such bankrupt; and if any sum shall have been really and *bonâ fide* paid, by or on the behalf of such apprentice to the bankrupt, as an apprentice fee, it shall be lawful for the commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice as they shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission."

The 6 Geo. IV. c. 107, s. 138, enacts, "That no person shall be deemed to be an apprentice for the purposes of an act passed in the fourth year of the reign of his present Majesty, intituled *An act for the regulating the number of apprentices to be taken on board British merchant vessels, and for preventing the desertion of seamen*, unless the indenture of such apprentice shall have been *enrolled* with the collector and controller of the port from which any such apprentice shall first go to sea after the date of such indenture, or in default of such enrolment, until the same shall have been enrolled at some port from which the ship in which such apprentice shall afterwards go to sea shall be cleared."

The 7 & 8 Geo. IV. c. 56, s. 17, "and for the greater encouragement of navigation," enacts, "That no higher duty of stamps than two shillings shall be charged upon the indenture of any apprentice bound to serve at sea in the merchant service, nor upon any memorandum or agreement made between the master and mariners of any ship or vessel, for wages or service on any voyage in such ship or vessel; anything in any other act to the contrary notwithstanding."

By 3 & 4 Will. IV. c. 63, s. 1, after reciting doubts to have arisen on the construction of 56 Geo. III. c. 139, it is enacted, that "from and after the passing of this act all indentures for the binding of parish apprentices which have been previous to the passing of this act allowed, and shall hereafter be allowed, by two justices of the peace acting as well for the county or district within which the place by the officers of which such child shall be bound shall be situated, as for the county or district within which the place shall be situated wherein such child shall be intended to serve, shall be deemed and taken to be as good, valid, and effectual, to all intents and purposes, as if the same had been allowed by two justices of the peace acting only for the county or district in which the place from which such child shall be bound is situated, and also by two other justices of the peace acting only for the county or district within which the place shall be situated in which such child shall be intended to serve."

Sect. 2. "And whereas, by divers acts of parliament heretofore made and passed, the directors, guardians, acting guardians, or other officers of incorporated hundreds, parishes, and other districts are by the said acts of parliament respectively authorized to bind poor children apprentices in the manner by the said acts of parliament respectively prescribed and directed: and whereas the said directors, guardians, acting guardians, and other officers have bound out poor children apprentices by indentures to which the said directors, guardians, acting guardians, and other officers have been, by their description as directors, guardians, acting guardians, or other officers of such incorporated hundreds, parishes, and other districts respectively, made parties of the one part, or to which they have, by their said descriptions respectively, been binding parties, and which indentures have been executed by the said directors, guardians, acting guardians, and other officers, by affixing thereto the seal of the corporation of which they are directors, guardians, acting guardians, and officers respectively, and in no other manner by them: and whereas doubts have been entertained as to the effect and validity of indentures so executed; and it is desirable to remove such doubts; be it declared and enacted, that from and after the passing of this act, in all cases where any indentures for the binding out poor children apprentices have been heretofore or shall be hereafter executed by any directors, guardians, acting

1. *Statutes on Apprentices' Settlements.*

6 Geo. 4, c. 16.

indentures by master's bankruptcy.

Commissioners may order any sum to be paid in respect of apprentice fees.

6 Geo. 4, c. 107.

No person deemed an apprentice under 4 Geo. 4, c. 25, until indenture enrolled with collector.

7 & 8 Geo. 4, c. 56.

Stamps on sea indentures, &c., reduced.

3 & 4 Will. 4, c. 63.

Indentures allowed by justices acting for two counties to be as valid as if granted by justices acting for different counties.

Indentures with seal of corporations annexed to be valid.

1. *Statutes on Apprentices' Settlements.*3 & 4 Will. 4,
c. 63.

Indentures to be allowed by two justices, one of them acting for the county and one for the city, &c.

This act not to set aside decisions already come to.

4 & 5 Will. 4,
c. 76.

Justices, in binding poor children apprentices, to certify that rules of commissioners have been complied with.

Justices' power reserved as between master and apprentice.

Military officers not liable to have parish poor apprenticed to them.

guardians, or other officers of any hundreds, parishes, or other districts now incorporated or hereafter to be incorporated under and by virtue of any act of parliament, by affixing thereto the seal of the corporation of which they are or shall be directors, guardians, acting guardians, or other officers respectively, such execution of the said indentures respectively shall be deemed and taken to be a good, valid, and effectual execution of the said indentures respectively by the said directors, guardians, acting guardians, or other officers of such incorporated hundred, parishes, or other districts respectively."

Sect. 3. "And whereas it is expedient that justices of the peace in every city, borough, or town corporate should have concurrent jurisdiction with county magistrates in apprenticing any child or children within the limits of such city, borough, or town corporate; be it therefore enacted, that from and after the passing of this act every indenture for the binding of parish apprentices within any city, borough, or town corporate shall be allowed by two justices of the peace, one of such justices acting for and on behalf of the county, and the other of such justices acting for and on behalf of the city, borough, or town corporate within the limits of which such child shall be bound."

Sect. 4. "Provided always, and be it further enacted and declared, that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures."

By stat. 4 & 5 Will. IV. c. 76, s. 15, "the commissioners are empowered to make and issue (*inter alia*) rules, orders and regulations for the apprenticing the children of poor persons." And by sect. 61 it is enacted, "that from and after the period at which any rule, order, or regulation of the said commissioners shall come into operation for the binding of poor children apprentices, in addition to such assent or consent, order or allowance of justices, as are now required by law, such justices or any one justice are and is hereby authorized and required to examine and ascertain whether the rules, orders, or regulations of the said commissioners then in force for the binding of poor children apprentices have been complied with, and to certify the same at the foot of every such contract or indenture, and of the counterpart thereof, in such form and manner as the said commissioners, by such rules, orders, or regulations, may direct; and until so certified, no such contract or indenture of apprenticeship shall be valid: provided nevertheless, that nothing in this act, or in any rule, order, or regulation of the said commissioners, shall affect the jurisdiction of any justices of the peace over any master or apprentice during the period of apprenticeship."

The annual Mutiny Act usually enacts, "that no officer of his Majesty's forces, residing in barracks or elsewhere under military law, shall be deemed liable to have any parish poor child bound apprentice to him; but that every such officer shall be wholly exempt from taking or receiving, or from having bound to him, any such child as an *apprentice*, any law, statute, or usage to the contrary notwithstanding."

2. *Of the Instrument of Binding.*

2. OF THE INSTRUMENT OF BINDING.(a)

Person bound apprentice by deed, &c., though not indented, is entitled to a settlement.

The 3 W. & M. c. 11, s. 8 (*ante*, 451, 452), in conformity with the 5 Eliz. c. 4 & 5, requires that the binding shall be by *indenture*, that is, by deed *indented*; and under that statute it was necessary that the deed, being a writing sealed and delivered by the parties, should be *actually indented*. (*Rex v. Mellingham*, 2 Bott, 492.) But the formality of indenting was removed by 31 Geo. II. c. 11, s. 1, which enacts, "that no person who shall have been bound an apprentice by any deed, writing, or contract, *not indented*, being first legally stamped, shall be liable to be removed from the town, parish, or place where he or she shall have been so bound an apprentice, and resident forty days, by virtue of an order of removal, granted by two justices of the peace of any county, riding, division, city, borough, town corporate, or place,

(a) See division of the subject, *ante*, 451. See also Vol. I. tit. "*Apprentices*."

or by virtue of any order of the justices at their general or quarter sessions, by reason or on account of such deed, writing, or contract not being indented only" (*ante*, 458).

But the binding must still be by deed, though indenting is no essential part of it.

Rex v. Ditchingham, 4 T. R. 769; 2 Bott, 377. The pauper H. Cook at eight years of age was placed out by the parish officers of B. to a parishioner, under the following agreement, which was written on the leaf of the parish book, together with several other agreements of the same sort, viz. "August 7, 1774. At a general parish meeting, held this day, it is agreed that R. Fisher shall take H. Cook and maintain her after the manner of an apprentice, with washing, lodging, clothing, &c. from this day until Michaelmas, 1780; R. Fisher to have 20*l.* with her, and at the expiration of the time to double clothe her: witness my hand, R. Fisher." This agreement was not stamped. The court said, that although a modern act of parliament had dispensed with the necessity of having the deed of apprenticeship indented, still the binding must be by deed. (See also *Rex v. Mawman*, Burr. S. C. 290.)

Rex v. Stratton, Burr. S. C. 272. An infant must be bound by indenture, and if by deed-poll it will be bad. (*Smith v. Birch*, 1 Bott, 528.)

The sessions are bound to receive evidence of an extrinsic illegal consideration, such as illicit cohabitation rendering the binding void. (*Rex v. Northwingfield*, 1 Bar. & Adol. 912.)

2. Of the Instrument of Binding.

The agreement must be by deed.

3. THE PARTIES TO THE BINDING. (a)

3. The Parties to the Binding.

It will be perceived by the cases on this subject, that the relation of master and apprentice may be contracted as freely as that of master and servant: (see *ante*, 332 to 345,) though it is usual for the parent to be an executing party to the deed and to covenant for his good conduct; and in the case of parish apprentices, the law imposes certain duties upon the parish officers and neighbouring magistrates, the observance of which is essential to the validity of the contract; and the 56 Geo. III. c. 139, s. 7, prohibits parish officers from binding any child as a parish apprentice until such child has attained the age of nine years (*ante*, 477).

In general, however, an infant may bind himself to serve an apprenticeship so as to acquire all the rights and benefits thereof, and to subject himself to the jurisdiction of justices, although he cannot, whilst under age, be sued on his covenant (b) unless by special custom as in London (c).

Rex v. Arundel, 5 M. & Sel. 257. George Slater was removed from Arundel to Ferring. Order quashed. Case:—The pauper was bound apprentice to one Barber, by indenture, in the usual form, (d) having a thirty shilling stamp, and regularly executed by Barber and the pauper, but not signed by any of the parish officers of Arundel, or assented to by any of the justices; and the question was, whether the signature of the parish officers, and the assent of the justices, were necessary to the validity of this indenture under the circumstances: the pauper was a cripple settled in Arundel; his mother in the first instance applied to Barber, expressing a wish that her son might be placed with him as an apprentice. The pauper when the indenture was executed was eighteen years of age, and had been for about a year before, and was then, in the Arundel workhouse, from whence he went to the attorney's office, where the indenture was executed, and there met his father and the parish officer; and it was agreed between Barber and the parish

An infant may bind himself apprentice by indenture, because it is for his benefit.

(a) See division of the subject, *ante*, 451; and see Vol. I. tit. "Apprentice."

(b) *Cro. Car.* 179; and 19 Vol. MS. 110; Moore, 135.

(c) Moore, 135; Com. Dig. London, N. 2.

(d) The indenture began, "This indenture witnesseth, that G. Slater, of

Arundel, in the county of Sussex, aged nearly eighteen years, of his own free will doth put himself apprentice to C. Barber of Patching, cordwainer, &c. for four years, &c.; and the said C. Barber, in consideration of the sum of 40*l.* to him in hand paid, &c."

3. *The Parties to the Binding.*

officer that the pauper should go into the service of Barber, and that the parish should pay the sum of 40*l.*, which was paid accordingly out of the fund belonging to Arundel. The pauper's father was present when the indenture was executed, and it was read over at the time. The pauper had not been previously consulted, and it was not with his good will that he went into the service, but he never expressed to any one any objection to being bound. Barber lived at Patching at the time of the binding, and afterwards removed to Ferring, where the pauper continued with his master, under the indenture, for nearly a year. After hearing Courthope, in support of the order, and D'Oyley, *contra*, Lord Ellenborough, C. J. said, "This indenture must be considered clearly as for the infant's benefit, and not having been vacated it must be considered as binding, so as to confer a settlement on him by reason of his service under it. This was not the binding of a parish apprentice, it was to a person not residing in the parish; and all that the parish officers did was the advancing of 40*l.* as the premium. As to any supposed controlling influence of the parish officers, I do not see how we can enter upon that subject, nothing being stated concerning it in the case. The influence, however, seems to have been that of the mother; the parish officers make the advance, and the pauper executes the indenture. I think the binding was undoubtedly for his benefit, and therefore valid." Bayley, J. "The pauper executed the deed without objection, and there was not any compulsion used at that time." Order of sessions quashed.

An infant may bind himself.

Newbury v. St. Mary's in Reading, *Fol.* 154, *And.* 373; 2 *Bott*, 363. A poor boy of fourteen years of age bound himself apprentice for seven years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the court: "It did gain him a settlement; for an infant may make an indenture for his own benefit."

Infants of seven years may be bound.

In *Rex v. Saltren*, *Cald.* 444; 1 *Bott*, 717; where the infancy of the apprentice was also made an objection to the validity of the binding, Willes, J. said, "No age is specified in the 43 *Eliz.*, under which this binding is made, or in the 8 & 9 *Will. III.*, which compels the master to receive the apprentice and gives the appeal. Still, it is said that, under 5 *Eliz. c. 4*, it is necessary that the apprentice should be above ten years of age, and that all the subsequent statutes are in *pari materia*. But that statute relates only to *husbandry*, which may require more bodily strength than most other occupations; and that statute cannot be connected with 43 *Eliz.*, which was made for the maintenance of the poor. The present case is that of a female child bound to *housewifery*. In other instances, the legislature has not considered seven as too tender an age. The children of vagrants may at that age be bound out, and the strength and ability of children, which from seven years of age to ten must vary greatly in point of fitness, in this respect is matter of consideration and discretion in the magistrates." And *Ashhurst* and *Buller* Js. agreed, "that the statute does not require any precise age, and that the whole consideration of *fitness* is in the discretion of the parish officers and the magistrates, who are the proper tribunal for such enquiries."

However, a modern statute (28 *Geo. III. c. 48, s. 4, ante*, 460), has humanely provided, that children under the age of eight years shall not be bound apprentice to *chimney-sweepers*.

But a boy under eight years of age cannot be bound apprentice to a chimney-sweeper; the indenture is void by 28 *Geo. 3, c. 48, s. 4*, and will not confer a settlement.(a)

Rex v. Hipswell, 8 *B. & C.* 466; 1 *M. & R. Mag. Ca.* 474. E. Miller was removed from Morpeth to Hipswell. Order confirmed. Case:—The pauper's husband, Joseph Miller, son of Jane, the wife of Thomas Salkeld, was, at the age of five years, bound by Thomas an apprentice to W. Wright, a chimney-sweeper, by an indenture made the 21st day of May, 1804, between T. S., yeoman, and pauper's husband, his son, and W. Wright, chim-

(a) From J. Holroyd's judgment in *Rex v. Stoke*, 7 *B. & C.* 571, it seems that if an indenture is voidable only, and the parties at any time avoid it, no previous service will confer a settlement. This point is not noticed by the report of the same case in 1 *M. & R.* 458.

ney-sweeper. The pauper's husband of his own free will, and with the consent of his father, bound himself apprentice with W. W., after the manner of an apprentice, to dwell with and serve him from the date thereof for seven years. And W. W. covenanted with the apprentice that he would teach him the trade of a chimney-sweeper, which the master used; and also would provide him with meat and clothes. In the case of the master's death, the apprentice might choose a master for himself. The pauper's husband served under it as an apprentice to W. W. during the time specified in the indenture. *Bayley, J.* "The title of 28 Geo. III. c. 48, is general, 'For the better regulation of chimney-sweepers and their apprentices.' The preamble states, 'that the laws in being respecting masters and apprentices are not sufficient to prevent the complicated miseries to which boys employed in climbing chimneys are liable.' The 1st sect. empowers parish officers to bind under certain circumstances. The 2d sect. contains a regulation applicable to parish apprentices. The 3d sect. enacts, that a particular form of indenture shall be adopted, equally applicable whether the binding is by the parish officers or the parents. It is not, however, necessary to decide whether those clauses apply to all bindings; because the fourth and several other sections clearly extend to all cases of bindings, whether by parish officers or parents, and reach all bindings or contracts of apprenticeship or service. The former branch of the 4th sect. enacts, that all indentures, &c. for binding any boy under eight years of age as an apprentice to a chimney-sweeper, 'than is by this act limited,' shall be void in law to all intents and purposes. The words, 'than is by this act limited,' are not sensible; but the object of the legislature is manifest, namely, to render void every indenture by which a child under eight years of age is bound apprentice to a chimney-sweeper. If the former part of the section left any doubt upon this subject, it would be removed by the latter part, the meaning of which is perfectly clear, 'that every person who shall henceforth have, take, employ, retain, or keep any such boy or boys as or in the nature of an apprentice or apprentices, or servant, employed in the capacity of a climbing-boy or chimney-sweeper as aforesaid, who shall be under the age of eight years as aforesaid, *contrary to the tenor and true meaning of this act*, and being convicted thereof, as hereinafter mentioned, shall forfeit and pay for every such apprentice or servant so by him or her had, taken, employed, retained, or kept, any sum not exceeding 10*l.* nor less than 5*l.*' But it is said, that *void* has been sometimes held to mean *voidable* only; and where the provision is introduced for the benefit of the parties only, such a construction may be right; but where it is introduced for public purposes, to protect those who were incapable of protecting themselves, it should receive its full force and effect. It would be contrary to the spirit of the act to consider the indenture in this case as voidable only; the consequence is, that no settlement has been acquired by service under it." *Littledale, J.* "The 4th sect. as it stands is certainly not very intelligible, nor can it be rendered so without either inserting or rejecting some words. By either of those means it may. By inserting the words 'or otherwise,' the sense is rendered complete; by rejecting the words 'than is by this act limited,' the same result is produced; and the rejection of those words gives effect to the enactment. The 4th sect. thus considered most clearly comprehends this case, and the indenture is therefore void."

It is clear from many of the cases, and from the language of several of the statutes, that a person of the *full age of twenty-one* may bind himself to serve as an apprentice. But a boy should not be bound to serve a *chimney-sweeper* after the age of *sixteen*. 28 Geo. III. c. 48, s. 1 (*ante*, 459).

Rex v. St. Petrox in Dartmouth, 4 T. R. 196. The father of the pauper's husband agreed with Mary Hayne, widow, to bind his son, then aged about *eight years*, an apprentice to R. H., son of M. H., who was then between the *ages of fourteen and fifteen*, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. Lord Kenyon said, "It has been properly admitted that this indenture was not absolutely void, but only voidable, on account of the infancy of the par-

3. *The Parties to the Binding.*

An adult may bind himself.

The master may also be an infant.

3. *The Parties to the Binding.*

The master's condition is immaterial.

So the master may have no right to take an apprentice.^(a)

A parish indenture was duly executed and allowed, but the master was fraudulently imposed upon the justices: This does not prevent a settlement.

ties; and that unless there were some other objection the pauper is entitled to the benefit of the apprenticeship."

A female may be bound apprentice by the parish to a day labourer, to learn housewifery; and it will be good, unless it is found to be fraudulent. *Rex v. St. Margaret's, Lincoln, Burr. S. C. 728; 1 Bott, 713.* The binding may be to two masters, to learn two distinct trades. (*Rex v. Louth, 8 B. & C. 247; post, 489, 504.*)

Anon. T. 9 Anne. If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such an indenture.^(a)

Rex v. Great Sheepy, 8 B. & C. 74; 2 M. & R. 286; 1 M. & R. Mag. Ca. 252. Order of removal of E. Burton, &c. from Great Barford to Great Sheepy confirmed. Case:—The pauper was bound apprentice by the parish on the 28th day of April, 1807, (the pauper being then aged seven years, or thereabouts,) to George Wilkins of Deddington, butcher, with him to dwell and serve till he should be twenty-one. The father of the pauper, whose settlement was at Great Sheepy, had died, and his widow had gone to reside with her father, George Wilkins, at Deddington, Great Sheepy relieving the widow till the pauper was seven years old. The parish then proposed to the mother to put the pauper apprentice to Measham cotton works, and told her they should no longer relieve her unless the pauper was apprenticed. Upon this the mother requested the officers to bind the pauper to her father, in order that the boy might not be removed from her. The officers consulted their rector, (a magistrate,) and having received his sanction, they and the mother, and Wilkins, met together, and went before the justices, without the pauper, for the purpose of binding him. The justices allowed the binding, and the indenture was executed by all parties, and a premium of 6*l.* was paid to Wilkins by the parish officers. There was nothing in the appearance of Wilkins to excite any suspicion that he was an improper person, and there was not any fraud or collusion on the part of the magistrates, or of the parish officers. The pauper continued to dwell with Wilkins, in Deddington, after the execution of the indenture, running on errands and doing whatever he was bidden to do till after he was nine years of age, when he left his grandfather and never afterwards returned to him; but after the binding he continued to go to school by day as he had gone before, and he never knew that he had been bound apprentice, neither did he receive any instruction in the trade of a butcher; and although Wilkins had been a butcher, it did not appear that he ever killed meat after the binding, and he was a man of needy circumstances. The sessions found that the pauper and the grandfather had

(a) *Gye v. Felton, 4 Taunt. 876.* In an action for harbouring an apprentice it was proved that the plaintiff, to whom the boy had been apprenticed, was not twenty-four years of age when the indenture was executed, in 1809; was not a housekeeper, as required by 5 Eliz. c. 4, s. 26; and carried on no trade mentioned in the statute. *Mansfield, C. J.*, delivered the judgment: "Upon looking into the statute, which is a great and comprehensive law, and probably at the time a very wise one, to prevent there being idle persons, it appears that apprentices are obliged to be bound; but with respect to the words of sect. 41, on which the present question arises, certainly they at first startle one,—it says, 'all indentures made otherwise than is by this statute appointed shall be clearly void to all intents and purposes.' Many cases have been cited, which say that

indentures not conformable to the act shall be only voidable, and not void. If 'voidable' was applied to adults only it would be extremely strange. With respect to infants, if applied to them, one can understand it. In all these cases the question arose with respect to infant apprentices; but there has been no case cited where the doctrine that the contract is voidable and not void is applied to the case of a master. There is a ground which makes it impossible for the plaintiff to recover, for it is further provided, that every person who shall take an apprentice contrary to this act shall forfeit 10*l.*, making it not only void, but unlawful; and if such a taking is illegal, it is impossible that the master can recover damages for the violation of a supposed right, originating only in a contract which the law forbids." Rule for nonsuit absolute.

colluded together and fraudulently imposed the grandfather upon the parish as a proper master for the child, and on the ground of this fraud alone held that no settlement was gained under the indenture, though they acquitted the parish officers of all participation in the fraud, and found that they had acted *bona fide* in the matter. Lord *Tenterden*, "The sessions have found that a fraud was committed, but not by the parish officers. It appears that an imposition was practised on them by the master. If it were competent, after a great lapse of time, to inquire into the fact, whether fraud had been committed in the binding out of an apprentice by any of the parties to the indentures, a vast number of settlements might be disturbed and great expense incurred. The law, by requiring in the case of a parish apprentice, that the master shall be approved by two justices, has endeavoured to provide that there shall be a proper master, and that every thing shall be done correctly. Where the justices have sanctioned a binding, and there has been no fraud in the parish officers, the safest course for us is to say, that service under such a binding confers a settlement, although the master may have imposed upon the justices. The sessions have mistaken the effect of the fraud found by them. Even supposing that they were right in finding such fraud, still it will not prevent a settlement." Order of sessions quashed.

Rex v. Louth, 8 B. & C. 247. An indenture by which an apprentice was bound for seven years, to serve A. B. for the first four years, and his own father for the last three, to learn two different trades, is valid, and one stamp is sufficient. More fully stated, *post*, 504.

Rex v. Chesterfield, 2 Salk. 479; 5 Mod. 329. A servant was put out by his late master to a barber, who was to teach him to shave and make peri-wigs, for which he was to have 5*l*. The servant was no party to the covenants between his master and the barber. And the court adjudged it not to make a settlement, because it was no service, and the servant was no more than a boarder there for his education, which was no service to make a settlement.

Rex v. Cromford, 8 East, 25. The pauper's husband, W. H., went on the 1st of May, 1796, being then 14 years of age, as apprentice to N. Kniveton, of Wirksworth, weaver, and continued to serve him as an apprentice for five years. The following indenture was executed by the master and the father of W. H., but not by W. H. himself: "This agreement, made the 1st day of May, 1796, between N. K., weaver, and J. H., miner; the said N. K. shall teach W. H., the son of J. H., the art and mystery of weaving, &c. in the best way he can, for five years from the date above; and that N. K. shall find W. H. all utensils belonging to the business; and that W. H. shall receive of N. K. half of what he earns, and the remainder to N. K." W. H. did not execute or become a party to any other indenture. Lord *Ellenborough*, C. J. "Here is neither a binding of the son himself apprentice, nor, if I may so say, of his parent for him, for there is no contract for his serving his master; nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship." The other judges concurred.

Rex v. Ripon, 9 East, 295. Removal from Ripon to Darlington, and quashed by the sessions. The pauper, being twenty-three years of age, was put apprentice by her father-in-law with her own consent, to one Husbands, in Hunton. She was present at the making of the agreement; but the indenture was only executed by the master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly twelve months in Hunton. And, without argument, by the court, "Is it possible to maintain this to be a competent binding of an adult who was no party to the indenture? The relation of master and apprentice did not exist."

Rex v. Arnesby, 3 B. & Ald. 584. Removal from Arnesby to Abthorpe. The pauper served some years under an indenture of apprenticeship in Abthorpe. The indenture stated that Simcoe, the pauper, son of Samuel Simcoe, glover, with the consent of his father, did put himself apprentice to

3. The Parties to the Binding.

May be bound to two masters successively.

The apprentice must be a party to the deed, though an infant.

If the binding be by the act of other parties, without his own intervention, no settlement is gained thereby.

An indenture is void if the pauper, an adult, (though assenting,) is not a party to the deed.

By the common law a father has no authority to bind his infant son apprentice

3. *The Parties to the Binding.*

without his assent; consequently, where an indenture was executed by the master and the father, but not also by the apprentice, it was held invalid, and gave no settlement.

But a parish apprentice may be bound without his assent.

W. S. framework-knitter, to learn his art, and with him, after the manner of an apprentice, to serve from the 10th day of May, 1802, for the term of seven years. It was regular, except that it was executed only by the father of the pauper and the master, and not by the pauper himself. *Abbott, C. J.* "The words of the 3 & 4 W. & M. c. 11 are 'that if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.' Before therefore any settlement can be gained, the court must see that the party is bound by indenture. Now the ordinary mode is for the party to bind himself, by executing the indenture. Even if he does not do that, still in the special case of a parish apprentice he may be bound without such execution; but then the binding takes effect by the authority of an act of parliament. This however is not the case of a parish apprentice; and unless we were to hold that it is competent for a father to bind his son apprentice without his assent (for which no authority can be produced), we must hold this indenture to be invalid. *Rex v. Houghton-le-Spring* (ante, 343) is very different. This was a case of hiring and service, the statutes applicable to which say nothing of the mode in which the contract of hiring is to be made; and there it was held that the deed executed by the servant, and his employment under it, were evidence to show the terms under which the hiring had been made. And I think that that decision was right. This case however stands upon very different grounds." *Bayley, J.* "An infant can only bind himself apprentice by deed; and the question in this case is, whether according to the words of the act this party is bound by indenture. The indenture indeed purports to bind the son, but the son has not executed it. It is said however that he has done that which is tantamount to an execution. If we were to hold that to be so, we should hold, contrary to all principle, that an infant might be bound by his act *in pais*, without executing the deed. In the case of a parish apprentice there is a special power given by the statute of Elizabeth to parish officers, and there an apprentice may be bound without his assent till he come of age. But a father has at the common law no such right. The passage cited from *Comyn's Digest* is unsupported by any authority. I think therefore that the indenture in the present case was invalid, and that no settlement was gained by the service under it." *Holroyd, J.* "The apprentice did not gain a settlement by the service in this case; for an infant cannot be bound merely by an act *in pais*. It has been argued, that as he has taken the benefit of the deed by serving under it, he must be bound by it. But that argument is not, as it seems to me, available. In *Rex v. Cromford* (ante, 489), the apprentice had served out his time; and in *Rex v. Ripon* (ante, 489), the indenture was executed by the father of the apprentice and the master, with her consent, and she also served under it. Yet in both those cases the indentures were held to be invalid. According to my recollection the distinction is this: where a party takes the benefit of a deed, but does not execute it, he will not be liable under it as for a covenant broken, but he may be liable under the implied contract raised by the acts of benefit which he takes under it. Here the infant was not bound by indenture, and no settlement was gained." *Best, J.* "It is said that the service here was tantamount to an execution: but where is that argument to stop? It might go the length of proving that a service for a single day, and that perhaps without proof of his knowledge of the contents of the indenture, would bind the apprentice. The dictum to which we have been referred applies only to land *qui sentit commodum sentire debet et onus, et transit terra cum onere*; and even there it would be a difficult point to establish that where a person took possession of the land for a single day, he was bound by all the covenants of a long lease which he had never executed. It seems impossible to consider this as the case of a person bound by indenture; and unless that he be so, he is not within the statute, and has gained no settlement."

Contrary decisions reconciled.

The case of *Rex v. St. Nicholas, Nottingham*, 2 T. R. 726, has been thought to be at variance with the doctrine laid down in the above case; but there is this distinction in the circumstances of them which may reconcile their apparent contradiction. In *Rex v. Arnesby* (ante, 489), the binding was voluntary,

but the indenture was not executed by the apprentice, and therefore invalid: whereas in *Rex v. Nottingham* the binding was by the *parish*, and the execution by the apprentice was not necessary to make the binding valid. The principal objections however were, that the master resided in another county from that in which the justices resided who allowed the indenture, and from which the pauper was bound. It was admitted that the master could not have been compelled, under the 8 & 9 Will. III. c. 30, s. 5, to receive the pauper, but he had executed the indenture (a) and received the apprentice, and consequently the objection with respect to him, it was held, could not be supported; and with regard to the other objection, it was observed, that by the 43 Eliz. the parish officers are to bind out the children 'where the justices shall see convenient,' and whether in or out of the parish is not specified. The judgment of Lord *Kenyon* therefore must be taken as applicable to the particular facts of the case, and not as laying down any general principles as applicable alike to all questions of apprenticeship." His lordship said, "If the master does not reject the binding, but assent to it, there is a concurrence of all parties to give validity to the binding, and if no objection be made to the binding before the apprentice has resided forty days, he thereby gains a settlement." *Ashhurst, J.* "At all events there can be no doubt that the parish officers may make such a binding as this, by consent of all parties. Here the master consented by receiving the pauper. The pauper did not object, but lived under the indenture five months. That implies his consent, and it was only on ill-treatment that he applied for his discharge; now that application is an acknowledgment on his part that the indenture is binding. The pauper having then served more than forty days, ought to have the benefit of it." *Grose, J.* "I consider all the parties consented to the binding. The case of *St. Margaret's, Lincoln, Burr. S. C. 728*, was considered as an express authority." (b)

Rex v. St. George, Exeter, 5 Nev. & Man. 61; 3 Adol. & Ellis, 373, S. C. By an order of two justices of the peace for the city and county of the city of Exeter, Mary Lee and her five children were removed from the parish of St. George to Crediton. Upon appeal the Exeter quarter sessions quashed the order, subject to the following case:—The settlement of the paupers depends upon that of John Lee, the deceased husband of Mary Lee. John Lee was born in Crediton of parents legally settled in that parish. When he was about twelve years old, an indenture dated 15th October, 1811, was executed by the parish officers of Crediton for the purpose of binding him apprentice to William Mugford, who was his uncle, and resided in the parish of St. George, Exeter. At the time of the execution of this indenture his father was at sea, and his mother having other children living with her in Crediton, was in the receipt of relief from that parish. John Lee himself was not residing with her, but had lived for a year or more with his uncle (Mugford) in the parish of St. George. The indenture was executed by the churchwardens and overseers of Crediton at the pay table of that parish, neither Mugford nor Lee being present, nor the magistrates who signed the allowance of the indenture; and it does not appear at what time or in what place they signed it, but it bears the signatures of two magistrates of the county of Devon. A counterpart was executed by Mugford at his house in Exeter, but Lee was not present when he executed it, and was not a party to it, nor to the original indenture. He continued to reside with Mugford, serving him in his business of a thatcher, till about a year after he attained the age of twenty-one years. The question for the opinion of the court is,

3. *The Parties to the Binding.*

Where a family were receiving relief from the parish in which they resided, held that the parish officers might, under 43 Eliz. c. 2, s. 5, and previous to the passing of 56 Geo. III. c. 139, bind out as a parish apprentice one of the children who had been living for more than a year past with a relation in another parish, and who was not present at the time of his being bound, and that it was not necessary that the master should be residing in the same parish: Held also, that the consent of the apprentice was not requisite for the validity of the binding.

(a) In a note to *Rex v. Arnesby, 3 B. & Ald. 588*, it is said the master did not execute the indenture, and it is so copied into 4 *Burn*, 498, 25th edit.; by reference to the report, however, this will be found incorrect.

(b) Mr. *Nolan* treats this case as an authority, for he says, speaking of an

apprentice put out by the *parish*, "His consent shall be implied if he lives under the binding." Mr. *Gambier*, on the contrary, in his clear and correct work, says "The adoption of the contract is not tantamount to execution," and quotes *Rex v. Arnesby*.

3. *The Parties to the Binding.*

whether this was such a binding of John Lee as that the residence and service under it would confer a settlement, he having lived out of the parish of Crediton a full year before the indenture was executed. The judgment of the court was now delivered by Lord Denman, C. J., who, after stating the facts of the case, proceeded as follows: "One point was made, which however was not intended to be reserved by the sessions, namely, whether before the stat. 56 Geo. III. c. 139, a child could legally be bound by the parish officers to a master not resident in their parish. We have no doubt on this point; it is expressly decided by *Rex v. St. Nicholas, Nottingham*, the authority of which case has never hitherto been questioned. The point which was intended to be reserved was, whether the parish officers had power under 43 Eliz. c. 2, s. 5, to bind out any child not at the time resident in their parish. That section, by the word 'such,' refers to the first section of the same act, and the first section has these words, 'the children of all such whose parents shall not by the churchwardens and overseers, or the greater part of them, be thought able to keep or maintain their children.' The words are not grammatically correct, but their meaning is obvious. At the time of the passing of the statute of 43 Eliz. c. 2, there was no law of settlement, nor could the children of paupers, if at a distance from their parents, be sent home by the parish officers. In that state of the law the provisions of the 43 Eliz. c. 2, s. 5, could not apply to any children not actually resident in the binding parish. But since the law of settlement has been introduced, all the unemancipated children of a pauper are considered as part of his family, and we think that *the parish officers of any parish where the pauper is settled and residing, and unable to maintain his children, may bind out his child, with the assent of two justices, and in the proper form, without the formality of having that child, if resident at a distance, brought home to his family.* The case of *Rex v. Cole Orton* (1 B. & Adol. 25), would at first sight seem to lay down the rule that the statute of Elizabeth is to be construed without any reference to any subsequent statutes; but on consideration we do not think that any such rule is there laid down. All that is decided is, that when a child is resident in a parish, and the parents are unable to maintain it, the parish officers may bind out the child though the parents be not settled in the parish, which is quite consistent with their having power to bind out one of a family legally settled and resident in and chargeable to their parish, though the individual be at the moment resident elsewhere. As to the consent of the child, it is not requisite in the case of a parish apprenticeship, and no danger need be apprehended that a child may be taken from a friend or relation against the will of that friend or relation, and against the will of his parents, and bound to a stranger, for the whole matter is under the superintendence of the justices, who cannot be supposed likely to sanction such an arbitrary proceeding. Under these circumstances we are of opinion that the order of sessions must be confirmed." Order of sessions confirmed.

Apprentices to
what watermen.

Rex v. Gravesend, 3 Bar. & Adol. 240. The 10 Geo. II. c. 31, s. 5, after reciting the inconvenience which happens by watermen, &c. taking apprentices before they are housekeepers or have any settled habitation for themselves or their apprentices, enacts "that it shall not be lawful for any waterman, though a freeman of the (waterman's) company, or his widow, to take to keep any person as his or her apprentice, unless he or she shall be the occupier of some house or tenement wherein to lodge him or herself and such apprentice, and that he or she shall keep such apprentice in the same house or tenement wherein he or she shall lodge or lie, on pain of forfeiting 10*l.* for every offence." By section 4 it is provided that no such freeman or freeman's widow shall take or retain more than two apprentices at the same time, under a penalty. Held, that by section 5, any contract to take an apprentice, entered into by such freeman or widow, not being an occupier of some house, &c., or having already two apprentices, was prohibited, and therefore that where a pauper bound himself by indenture of apprenticeship to serve the widow of a waterman, she not having such house, &c., but it being understood that he was to live at the house of a freeman of the company (which he did), and to serve him conformably to the indenture, he

having two other apprentices at the time, such indenture was absolutely void, and no settlement was gained by serving under it.

4. THE EXECUTION OF THE INSTRUMENT. (a)

It will be observed by the cases under the last head, that although, generally speaking, the parties to the deed become so by executing it, yet there are some instances in which this ceremony is not essential to the validity of the instrument. In 1 *Nol. P. L.* 499, it is said, "although the master and apprentice must be parties to the deed, yet the settlement is not prevented by the master's neglect to execute, provided the apprentice is bound, and the law is the same whether it be a parish or a voluntary apprentice;" and several of the preceding cases are cited; to which may be added *Rex v. Ribchester*, 2 *M. & S.* 135; and *Rex v. St. Peter's on the Hill*, 2 *Bott*, 495. The pauper was bound an apprentice in *St. Peter's in Chester* for seven years, to a carpenter, but the indenture was not executed by the master. *Lee*, C. J. "It is objected that this indenture is not good, because it is not executed by the master, but that makes no difference if the apprentice himself were bound."

Rex v. Fleet, *Cald.* 31. The indenture was properly executed by the parish officers, and allowed by two justices, but neither that nor the counterpart were executed by the master. It was contended that as the 8 & 9 *W. III.* c. 30, s. 5, requires the master to execute a counterpart, a settlement could not be gained unless the master executed. But Lord *Mansfield*, C. J. said, "There is no doubt. The binding was authorized by the 43 *Eliz.* long before the act requiring a counterpart. But, though the binding was valid, it was doubtful, till that act was made, whether the persons to whom they were bound were compellable to receive them. That statute was therefore made, and it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other respects confirms the power of binding, which was already fully established."

Rex v. St. Cuthbert, Wells, 5 *Bar. & Ad.* 939; 3 *Nev. & M.* 100, *S. C.* On special case the sessions found that J. E., by indenture, in 1774, was put apprentice to P., for and in respect of W.'s estate; and there was a covenant by P. to teach J. E. the business of husbandry. The indenture was executed by the parish officers, and W. P. was a farmer, and tenant to W., who was a stocking weaver. J. E. never served P., but lived with W. long enough to gain a settlement by apprenticeship, if he could acquire one by such service. The sessions not having found that P. ever executed the indenture, or assigned the apprentice to, or assented to his service with W., it was held that a settlement by apprenticeship was not proved.

Rex v. Lutterworth, 3 *B. & C.* 487. Where a parish has united with others for the support of the poor, according to the provisions of 22 *Geo. III.* c. 83, and a guardian has been appointed, the churchwardens and overseers may, nevertheless, bind poor children apprentices, and it is not necessary that the guardian should sign the indentures.

5. OF THE TERM OF YEARS. (a)

Although the 5 *Eliz.* c. 4, declared apprenticeships for less than seven years void, yet before the repealing act, 54 *Geo. III.* c. 96, it was held that such contract is voidable only, and not void; and that, therefore, a service under an indenture for a less term than seven years entitles the apprentice to a settlement.

St. Nicholas v. St. Peter's, Ipswich, 2 *Stra.* 1066; *Burr. S. C.* 91; 2 *Bott*, 493. There was an indenture of apprenticeship for four years, which the apprentice served accordingly. It was urged that this could not gain a settlement; for the 5 *Eliz.* enacts, that all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and by

4. Execution of the Instrument.

4. The Execution of the Instrument.

Not essential that master should execute.

Same point.

But the master must assent.

When guardians of united parishes need not execute.

5. Of the Term of Years.

Binding for a less term than seven years does not render an indenture void, but voidable only. See remarks on

(a) See division of the subject, *ante*, 451, and Vol. I. tit. "Apprentices."

5. *Of the Term of Years.*

this statute in
Rex v. Louth,
post, 504.

A binding of a
parish female till
twenty-one does
not render the
binding void.

So a binding for
six years is merely
voidable.

Binding for an
unlimited time
only voidable.

A binding for a
term that may
extend beyond
the age of twenty-
one, when only
voidable.

the same statute, persons dwelling in cities and towns corporate shall take apprentices for seven years at the least; whereas this master, dwelling in a town corporate, had taken this apprentice only for four years. By Lord Hardwicke, C. J. and the court: "The indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice." See also the observations in *Gray v. Cookson*, 16 East, 13.

Rex v. St. Petrox, Burr. S. C. 248; 2 Bott, 496. The pauper was bound a parish apprentice in *St. Petrox* until her age of twenty-one, without the alternative, or till time of marriage, as the statute, 43 Eliz. c. 2, s. 5, (*ante*, 452), requires. It was urged that she gained no settlement, the binding being contrary to the statute, and therefore void. But by the court: "*St. Nicholas v. St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement."

Rex v. Evered, Cald. 26; 1 Bott, 638, S. C.; cited per Lord Ellenborough, C. J., *Gray v. Cookson*, 16 East, 27. In this case it appeared that the apprentice had been bound, when an infant, for six years, by indenture; and that afterwards when of age he had run away; and it was held that such a binding was not void, but merely voidable.

The same point was determined in the case of a parish apprentice, in *Rex v. Chalbury*, 1 Bott, 706.

Rex v. Woolstanton, 1 Bott, 707. An unlimited binding of a parish apprentice was not void, but only voidable. And that the statute for putting out parish boys apprentice, as to that part which speaks of binding them till the age of twenty-four, is only directory; but that if it were compulsory, the indenture would be, for want of this, only voidable.

We have seen that apprentices to chimney-sweepers should not be bound longer than sixteen years of age, (*ante*, 459).

Rex v. St. Gregory, Canterbury, 2 Adol. & Ellis, 99; 4 Nev. & Man. 137, S. C. Where a statute, incorporating guardians of the poor of a certain district, enacted that it should be lawful for the corporation to bind out apprentices for any number of years, "provided such child be not bound for a longer term than until he or she shall have attained the age of twenty-two, if a boy, and twenty, if a girl," it was held, that an indenture by which a boy, fifteen and a half, was bound for seven years, was voidable only, and not void; and that therefore a settlement might be gained under it. Public policy was said to be an unsafe and unsatisfactory, though a legal ground of decision.

6. *Of the Premium, &c.*

6. OF THE PREMIUM AND DUTY THEREON, AND STATEMENT THEREOF IN THE INDENTURE. (a)

The statute, 8 Anne, c. 9, s. 32 to 45 (*ante*, 453 to 457), and the 9 Anne, c. 21 (*ante*, 457), first imposed a duty on any premium, whether pecuniary or otherwise, given with any apprentice, and which at present is regulated in amount by the 55 Geo. III. c. 184 (*ante*, 474). The 35 & 39 sects. of 8 Anne, c. 9, (*ante*, 454, 455), declared void all indentures of apprenticeship, unless the full premium were truly inserted in the deed, and unless the deed were brought to the stamp office within certain times, and duly stamped (*ante*, 455), but contain exemptions in favour of certain parish apprentices; and the 18 Geo. II. c. 22, s. 23, 24, and 22 Geo. II. c. 45, s. 5, 6, 7, 8, contain provisions for remedying the defect.

The stamp is therefore an essential part of an indenture of apprenticeship; and formerly it was requisite that there should be one stamp in respect of the instrument itself, and another in respect of the fee or premium, where a

(a) See division of the subject, *ante*, 451, and Vol. I. tit. "Apprentices."

fee was given; but two stamps have not been necessary in any such case since the consolidation of the stamp duties by the 44 Geo. III. c. 98, which afterwards gave place to the 55 Geo. III. c. 184, by which the stamp duty upon these instruments is now regulated. (a)

Cuerden v. Leyland, 2 Stra. 903; 2 Sess. Ca. 134; 1 Bott, 545. Case:—The pauper was bound apprentice by indenture, and the master had 20s. paid him; he served three years, but the master never paid the duty of 6d. in the pound according to 8 Anne, c. 9, s. 39, which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue, J.*, who went the circuit, and he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained, and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the King's Bench, the order was quashed; for they said it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act.

Baxter v. Faulam, 1 Wils. 129; 1 Bott, 549. The question upon a demurrer was, whether an indenture of apprenticeship, where 6d. is mentioned to be the sum given with the apprentice, was void for want of the duty being paid for that sum. By the court: "No duty was ever intended to be paid for so insignificant a sum, there being no coin in England small enough to pay it. And by the act no stamp is required for less than 20s."

Rex v. Yarmouth, Burr. S. C. 379. The pauper, W. Jackson, was bound, and served a seven years' apprenticeship in St. Julian's, Norwich. But it appeared that the apprenticeship was in consideration of 6d. given to the master with the apprentice, and no duty was proved to be paid for the same: the point was given up, on the authority of *Baxter v. Faulam*, (*supra*).

Rex v. Chipping Norton, 5 B. & Ald. 412. Removal of Jane Eely from Aynho to Chipping Norton. Order confirmed. Case:—By indenture of the 30th October, 1794, William Eely, the late husband of the pauper, bound himself to serve R. Philips, of Chipping Norton, as an apprentice for seven years, and Phillips, in consideration of 25*l.*, the sum given with the apprentice, covenanted to instruct him in the business of a cooper. The indenture was duly stamped, with a stamp denoting the payment of the several duties, amounting in the whole to 6*s.*, imposed by different statutes upon the indenture itself: but it was not stamped with any stamp in respect of the premium, as required by 8 Anne, c. 9, within the time required by that statute, nor until the making of the order of removal, and after the entering of the appeal. Before the hearing of the appeal, the indenture was stamped, upon the payment of 5*l.* penalty, and of 1*l.* with a stamp denoting payment of a duty of 1*l.*, being the *ad valorem* duty stamp used to denote the payment of such duty under 55 Geo. III. c. 184, and 1*l.* being the duty payable under that statute in respect of a premium of 25*l.* given with an apprentice. The duty payable in respect of the like premium under 8 Anne, c. 9, was 12*s.* 6*d.* only; the duties payable under both the last-mentioned statutes, were, after they were paid into the exchequer, applicable to the same purposes. The stamps used by the commissioners under 55 Geo. III. c. 184, are of a different sort from those which were required to be procured and used by 8 Anne, c. 9, which were poundage stamps. These stamps were used until the passing of 44 Geo. III. c. 98, which imposed an *ad valorem* duty, and the poundage stamps were disused, and the dies with which they were formed were then broken up, and are not now in existence. Eely served under the indenture seven years.—*Abbott, C. J.* "I am of opinion that this indenture

6. Of the Premium, &c.

Where the duty is not paid, the indenture is void, and no settlement acquired.

An indenture of apprenticeship, executed before the 44 Geo. 3, c. 98, must be stamped with the premium stamp within the time prescribed by 8 Anne, c. 9; and where such an indenture was stamped at the time of its being produced in evidence, with the stamp required by 55 Geo. 3, c. 184, but not within the time prescribed by 8 Anne: Held, that the indenture was altogether void, and that the pauper gained no settlement by serving under it.

(a) *Quære*, whether an indenture of apprenticeship, executed since the 55 Geo. III. c. 148, would be affected by the decision in *Rex v. Chipping Norton*, 5 B. & Ald. 412; and whether a proper stamp in proportion to the duty might not be impressed on payment of a penalty?

6. *Of the Premium, &c.*

was void, not having been stamped within the time required by law; and consequently that the pauper gained no settlement by serving under it. By 8 Anne, c. 9, s. 32, a premium stamp is imposed, and by sect. 36, indentures signed within the limits of the weekly bills of mortality were required to be stamped within one month after the date, and by sect. 37, every indenture entered into elsewhere in Great Britain shall be either stamped within two months, or brought within that time to some collector or officer appointed for the management of these duties, who shall indorse a receipt for the duty paid, bearing date on the day of payment. By sect. 38, indentures executed within fifty miles, to be computed from within the limits of the weekly bills of mortality, shall be stamped within three months; and if at a greater distance, within six months after the date or making thereof. By sect. 39, all indentures not stamped within the respective times for that purpose limited by the act, are declared void, and not available in any court or place, or to any purpose whatsoever. Here, therefore, the legislature expressly requires that the instrument shall be stamped within the prescribed time, and declares that, in case of omission, it shall be void to all intents and purposes; and that forms a distinction between this case and those that have been cited in argument." (a) Order of sessions quashed.

Time of stamping, when immaterial.

Rex v. Preston, 5 B. & Adol. 1028. Where an instrument is not required by law to be stamped within a particular time after its execution, the court, upon its being offered in evidence, will not inquire when the stamp was affixed, nor, if a penalty was incurred, whether the proper penalty was paid on the stamping. An indenture of apprenticeship without premium was executed April 27th, 1825, but not stamped till July, 1832, when a 1*l.* stamp was put on it, and a 5*l.* penalty paid. Afterwards a double duty (2*l.*) was paid. The indenture was offered in evidence to prove the settlement of a pauper by service under it. Held, that as it was not within stat. 8 Anne, c. 9, which limits the time for stamping indentures, the court was not called upon to notice the circumstances under which the stamps were affixed.

The premium given by the parish officers, upon the binding out of a poor apprentice, need not be set out in the indenture in words in full length; such an indenture being exempted from any duty by 8 Anne, c. 9, s. 40, the insertion of the premium being required only to ascertain the amount of the duty.

Rex v. Oadby, 1 B. & Ald. 477. A poor child, by indenture executed by himself, his father and master, bound himself an apprentice. The parish paid all the expense of binding, and gave the master a premium of one guinea. The premium was not mentioned in the indenture. Was it void for this omission? The Court thought that the act was entirely a revenue act. It contains no provisions but those relating to duties. Its title is, "for laying certain duties on candles, and certain rates on monies paid with clerks and apprentices." It had been urged that the premium should appear, as justices had a jurisdiction when the sum paid did not exceed 5*l.* and might award restoration of part. But the court thought there was not in general such a penury of words in statutes, that if that had been the intention, it would not have been expressed in some corner of some clause. Bayley, J. said, "Though sect. 39 in terms requires the sum paid to be inserted, yet it was only for the purpose of raising a duty. When therefore sect. 40 exempts parish indentures from the duty, it entirely supersedes the necessity of inserting the sum paid; and the reason of the provision ceasing, the provision itself ceases to be necessary." Abbott, J. "The court ought not, without seeing its way clearly, to hold this to be a good objection, for it may involve questions of considerable importance; such as the freedom of a corporation, and the following of a profession."

A public annual charitable subscription, held to be a "public charity."

Rex v. St. Matthew, Bethnal Green, Burr. S. C. 574; 1 Bott, 641. 5*l.* was inserted in the indenture as given with the apprentice, and was paid to the master, and the indenture had no stamp denoting the duty of 6*d.* in the pound being paid. This sum was paid out of a voluntary annual subscription for putting out children apprentices, brought up at the charity school of the parish of St. John, Wapping; and trustees are appointed annually for

(a) Evidence of its contents would be admissible, it seems, if it had been lost before the time for affixing the stamp had expired. *Bousfield v. Godfrey*, 5 Bing. 418.

managing the charity, and a treasurer. It was objected, that this being a private and not a permanent charity, and consequently not within the exception of the act of parliament as to public charities, the indenture, therefore, not being stamped, was void. But by Lord Mansfield and the court: "It is a public charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious; a private charity might be calculated to evade the act; a public one cannot be supposed to have been so. But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good." (See 8 Mod. 365.)

Rex v. Fakenham, 2 Adol. & El. 528; 4 Nev. & Man. 553, S. C. An order of justices, whereby Stephen Carter and wife were removed from the hamlet of Heigham, in Norwich, to the parish of Fakenham, in Norfolk, was confirmed, subject to the following case. In order to prove a settlement in Fakenham, the respondents produced the will of John Norman, dated 19th February, 1720, whereby certain real estates were devised to trustees and their heirs, upon trust (at certain intervals after testator's death) to put to school, and at the age of fifteen to bind out apprentice to some trade a son of some one of his or his first wife's relations, until the whole number of boys together in being, that should be thus put to school and provided for, should amount to thirty. And the testator directed that as often as there should be a deficiency of the descendants of his or his first wife's relations, the trustees should put to school and place out apprentice a son or sons of some inhabitant or inhabitants of Beer Street Ward, or Upper Conisford Ward, in Norwich, or of the parish of Catton, in Norfolk; and the testator directed, that at the end of sixty years after his decease, the number of boys should be increased by two, three or four in a year, until it reached 120, of his or his said first wife's descendants, if they could be known or made out by his trustees, and if not, of such others as aforesaid out of Beer Street or Conisford Wards, and Catton, if enough were there to be had, if not, out of the neighbouring parishes in Norwich, at the discretion of his trustees, such children of strangers to be chiefly of such parents as had been reduced by losses and had paid to church and poor. An indenture of apprenticeship, dated 1st February, 1821, not stamped, was then produced, by which the pauper, with his father's consent, bound himself apprentice to H. Vincent, of Norwich, tinman, to learn his art for seven years, at a premium of 15*l.* stated in the indenture to be paid to the master by George Morse, the treasurer appointed according to the will of Norman, for the purpose of annually binding out poor children apprentices; and Vincent covenanted with the pauper, and his father, and Morse, to teach the pauper the art or mystery of a tinman, and to pay the father 3*s.* a week for the first year, and an additional shilling a week during each succeeding year of his apprenticeship. The indenture was executed by Vincent, the pauper, and Morse. The pauper was bound out as the son of a relation of Norman or his first wife. The premium was paid out of the rents of the trust estates, and the indenture was prepared by the clerk to the charity and paid for by the charity. There never had been a deficiency of the sons of such relations, and no stranger had had the benefit of the bequest. The pauper served Vincent, in Norwich, under the indenture, for about three years and a half, when at the request of the pauper (who was still a minor) Vincent consented that he should serve the remainder of his time with his (the pauper's) brother, in his trade of plumber and glazier, and agreed to give to the brother 6*l.* as part of the 15*l.* paid as a premium on the binding of the apprentice for taking him. In pursuance of this agreement, Vincent returned to the pauper 6*l.* as part of the premium received with him. For this sum the pauper accounted with his brother. There was no agreement in writing between the first and second masters, or between the pauper and his second master. The pauper served his brother two years, and was taught by him the trade of a plumber and glazier, and during that time slept in Fakenham. Neither the trustees under Norman's will, nor the treasurer, were parties to the agreement with the pauper's brother. The counsel for the appellants objected to the indenture's being received in evidence for want of

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A. is apprenticed to B. who was a tinman, by the trustees of a charitable fund, and premium paid out of that fund. A. serves B. three and a half years, when at A.'s request, B. verbally, and without the knowledge of the trustees, consents that A. shall serve the remainder of the time with C. a plumber, and agrees "to give to C. 6*l.* as part of the 15*l.* paid as a premium on the binding of A. for taking him. Held that the transfer was void for want of a stamped assignment, under 55 Geo. 3, c. 184, sched. 1, tit. Apprenticeship.

6. *Of the Premium, &c.*

a stamp, but the court received it and confirmed the orders of removal. If this court shall be of opinion that the indenture required a stamp, either originally or upon the pauper's going to serve his brother, or that the service with the brother was insufficient to confer a settlement, either on the ground that the trade of the brother was different from that of his first master, or that neither of the trustees nor the treasurer were parties to the agreement between his master and brother, the order is to be quashed; otherwise, to be confirmed. Lord Denman, C. J. "In this case it was the old master that paid the new. The statement in the case, that the 6*l.* was paid as part of the old consideration paid out of the charitable fund, must be construed consistently with the facts of the case; it must be taken to mean that the 6*l.* was considered a fair proportion of what the original money was, not that it was a part of the original money." *Littledale, J.* "The object of the will was, that every thing relating to the apprenticeship should remain in the hands of the trustees. A new arrangement was made, both as to the service and premium, to which the trustees were no parties. Whatever exemption therefore belonged to the transaction originally, it was taken away when the master stood by himself, and a transfer took place, with which the charity had nothing to do." *Williams, J.* concurred. Order quashed.

A bequest of money to put out children apprentices, is a "public charity" within 8 Anne.

Rex v. Clifton upon Dunsmore, Burr. S. C. 697; 1 Bott, 641. G. Hammond, about thirteen years of age, was bound apprentice by indenture stamped with a treble sixpenny stamp, to W. W. of Swinford, for seven years. The consideration money in the indenture (being 7*l.*) received by the master, was mentioned in the indenture to be paid by J. Baily of Clifton, being *charity money* left by C. B. widow. The indenture was not stamped with any stamp denoting 6*d.* in the pound to have been paid, nor any apprentice duty paid. One item of the will was, to "Clifton 50*l.* to be given as my brother thinks fit; some of it to put out children apprentices." The court held this to be a *public charity*, and that therefore the duty was not payable on the apprentice fee.

Where money is given by the apprentice's grandfather to the master to clothe the boy, before he enters upon his apprenticeship; it is not such a consideration as the statute requires to be set out in the indenture.

Rex v. North Oworm, Burr. S. C. 145; 1 Bott, 462. The mother of S. Spenser, the pauper, proposed to put him apprentice to a master at North Oworm, who refused to take him because he wanted clothes; but proposed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was agreed, that the grandfather should pay 30*s.* to the master to clothe the boy, and that the master should take him as an apprentice. In pursuance of that agreement, the master did lay out 30*s.* in clothing for the boy. Afterwards an indenture was executed by the master and the apprentice: the 30*s.* was paid by the grandfather to the master. The apprentice served under such indenture for six years in North Oworm. In the indenture a covenant was made for the master to find clothes for the apprentice during the term. But no mention was made of the 30*s.* neither was any duty paid for the same, nor was the indenture stamped with the additional stamp required by the 8 Anne, c. 9, to denote such sum given with the apprentice. By the court: "The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon the state of the case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy; and the grandfather was obliged to repay him, and did repay him. This clothing was before the binding, so that it amounts to no more than putting a boy apprentice ready clothed. It is not a premium received by the master. *The statute means money given for the benefit of the master.* But he has no benefit from this 30*s.* He was not obliged to clothe the boy before he was his apprentice; and this agreement was executed before the indenture was sealed. And adjudged that the apprentice gained a settlement.

Consideration money given with an apprentice by parish officers is not liable to the

Rex v. St. Petrox in Dartmouth, 4 T. R. 196. J. Hambling, the father of the pauper's husband, deceased, having been told by the parish officers of Townstall they would give him 20*s.* to bind out his son an apprentice, did so bind him out: and the agreement between H. the father, and M. Haynes, a

widow, and the mother of an infant, to which infant the boy was to be bound, was, that he should pay M. H. 20s. as a consideration for such apprenticeship. It did not appear that she *knew* of any promise made by the overseers to Hambling respecting such advance of money. Hambling afterwards received from them the 20s.; he paid 5s. of that sum to M. H. and procured the remainder, but applied it to his own use. The indenture had no stamp for the consideration money. Lord *Kenyon*, C. J. "We must consider this to be a fair binding to the son, because the sessions have not stated it to be fraudulent. Then, if it were, as it professed to be, a binding to the son, and not colourably to the mother, the statute requires no duty for the consideration money, even though the money were not raised at the charge of the parish. The act of parliament, taking it altogether, undoubtedly imposes the duty on money paid to the master or mistress ONLY; for it says, 'that every master or mistress to or with whom, or to whose use any sum shall be given, paid, secured, or contracted for or in respect of any such apprentices,' &c. Now here the master did not receive the money which was given with the apprentice, but for reasons (not here stated) the mother received it; and it is not stated that she received it *as agent for her son*. But even supposing that the master had received or contracted for the consideration money, it was not subject to the duty imposed by the statute of Anne, because it was money raised at the common and *public charge* of the parish of T., and as such it comes within the proviso in that act. It was assumed in argument, that there can be no binding of a parish apprentice within the meaning of this proviso, unless it be compulsory under 43 Eliz., with the concurrence of two magistrates. But that cannot be the construction of the statute, for one of the purposes of raising rates for relief of the poor, was to put out children apprentices at the expense of the parish; that is not restrained to a compulsory binding, which is under a subsequent clause. The object of the act is as well answered by a binding with the consent of the parents, as by a compulsory binding without their interference. All that is required is, that it should be obligatory on the children. If the parents discharge their duty, there is no necessity for the interference of the magistrates or parish officers; but if they neglect it, or are not able to procure masters, the parish officers are bound to interfere, and they stand *loco parentis*." *Ashhurst*, J., giving no opinion on the objection that the payment had been made to the master of the apprentice, and not to the mother, said "that the money having been paid out of the public fund of the parish, was decisive." *Grose*, J. agreed.

Rex v. Portsea, Burr. S. C. 884. An indenture of apprenticeship covenanted "that *sufficient meat, apparel, physic, and lodging, and all other necessaries*, during the term, should be *provided* for the apprentice *by the father*; for which purpose the master was to allow him 4s. per week." There was a covenant for deduction from this payment in case of absence or loss of time. It was objected that *the duty had not been paid for the lodging and physic, covenanted to be found by the father*. And it was answered, "that the 4s. per week was an *equivalent*, and the additional stamp unnecessary." And the court held that this answer was sufficient, as there was nothing before them to show that 4s. per week was not an equivalent; and they were not to presume it was *not* an equivalent; (*i. e.* that it was not equal to the amount as cost of the board, &c.;) if it were less than that cost, then the overplus paid for by the father would be a benefit to the master, he being at common law bound to provide for his apprentice: as to this obligation, see *Rex v. Leighton* (*post*, 500). And *Aston*, J. hinted that the 8 Anne, c. 9, s. 45, which says, "that where any thing or things, *not being lawful money of G. B.*, shall directly or indirectly be given," means *such* other equivalents as a horse, or other valuable thing of that sort; *not* such an agreement as this is, "to provide necessaries for a son."

Rex v. Walton in Le Dale, 3 T. R. 515. R. Cunliffe was removed from Walton in Le Dale to Kirkham. The pauper bound himself by an indenture of apprenticeship to Croft and Hall, calico-printers, for seven years. The indenture contained a *covenant on the part of the pauper, that he would pro-*

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duty imposed by 8 Anne, c. 9, s. 35, even though the binding be voluntary, and the party receiving the apprentice be not privy to the gift.

The father providing lodging, board, &c. for the apprentice, and the master to pay four shillings per week to the father for the same, no additional stamp is necessary.

Where an apprentice covenants to provide himself meat, drink, lodging, &c., and the

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master covenants to pay him wages; it must appear that the wages are not an equivalent, if it is intended to invalidate the indenture for want of the proper stamp.

vide for himself meat, lodging, apparel, and physic, during the term; and his master covenanted to pay him 5s. per week for the three first years; 6s. per week for the fourth and fifth years; and 7s. per week for the sixth and seventh years. There was a proviso that the pauper should not be entitled to any wages during sickness or neglect of his work. And in case he was not employed at the business for which he was bound, then his masters should be at liberty to reduce one half of his wages for two months yearly. The pauper served under this indenture, which was written upon the proper stamp, but no additional duty was paid according to 8 Anne, c. 9. (a) It was insisted that the indenture was inadmissible in evidence, and void, not only for want of a stamp for the additional duty, but also on account of the nature of the contract and the clauses contained in the indenture; but the sessions thought otherwise, and reversed the order. Lord Kenyon, C. J. "*Pennington v. Sudall*, 1 Bott, 551, which has been cited, cannot be taken as an authority deciding any thing. If we were to infer any thing from that case, it would rather be the reverse of that which has been supposed; because the case went off on an agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a legal apprenticeship. The principal question relative to the additional stamp duty cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain things, which it is said the master is bound by law to provide for him, and for which it is contended an additional stamp duty ought to have been paid, because it is a benefit to the master: but, on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say that those payments were not equivalent for the maintenance, &c.? I believe they are much more. But before we can decide the material question the justices must find the fact, whether those payments were or were not an equivalent. I therefore studiously avoid giving any opinion on the general question; and it is enough for me to say at present, that it does not appear but that the master gave an equivalent for the benefit which he received." Buller, J. "I do not see any thing like a benefit to the master, for which an additional duty ought to have been paid. The master covenanted to pay the apprentice so much per week; that clearly is not within the statute. Then it was provided that in case the apprentice should be ill, and be unable to perform his business, or neglect to do it, he should not receive any wages; but this was no benefit to the master; it was only an agreement that he *should not pay*, but not *that he should receive any thing*."

If the friends of an apprentice covenant to maintain him on every Sunday, and to provide him with clothes, this is not such a benefit as is liable to a duty imposed by 8 Anne.

Rex v. Leighton, 4 T. R. 732; 1 Bott, 556. J. Price was removed from Leighton to Church Coppenhall. Order quashed. Case:—The pauper was bound apprentice by his father to R. Lindrop, of Church Coppenhall, shoemaker, under an indenture for four years, to learn the trade of a shoemaker, in which was a *covenant by the father that he would, at his own charge, provide for his son sufficient meat and lodging, on every Sunday during the term, and would provide him with apparel (except working aprons and shoes) and washing.* There was a covenant on the part of the master to provide for the apprentice meat and lodging (except on Sundays) during the term. The indenture was on a 5s. stamp. The pauper served the four years for six days and nights in each week, and went to his father's every Sunday. The father expended 5*l.* and upwards in clothing his son, and in providing meat, &c., for him on Sundays during the term; for this no additional duty was paid. Lord Kenyon, C. J. "This has been *verata questio* ever since I came into Westminster Hall, and various opinions have been entertained upon it. It is true that if an indenture be taken to the stamp office, they will set their value upon every supposed benefit to the master for the sake of the revenue: but that is by no means decisive. The question depends on 8 Anne, c. 9,

(a) It was admitted, but not stated in the case, that the wages were equivalent to the board, whilst the apprentice was employed as a printer.

s. 32, 45 ; the former section imposes a duty on all sums of money given with any apprentice, &c., and the latter enacts, 'that where any thing, not being money, shall be given, contracted for, or secured, to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in such manner,' &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by *Aston, J.*, a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master, for which a duty should be paid. It occurred to me early in the argument, that in order to see what would or what would not be considered as a benefit to the master, it was necessary to inquire what were the duties that resulted from the bare relation of master and apprentice. And I think that the 8 & 9 W. III. c. 30, s. 5, throws a great deal of light upon that point ; because if, from the time of the statute of Eliz. to that time, masters could not be compelled to provide for parish apprentices, and that law was made for the purpose, it shows that the obligation of providing for apprentices did not result from the mere relation of master and apprentice ; for if it had, that part of the statute of W. III. was unnecessary. The case of parish apprentices is the only one where an apprentice can be put out *nolens volens* ; all the others depend on the express stipulation to be made by the parties interested. It has never been held that the obligation of the master extended to the providing clothes for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance ; for the former are equally necessary with the latter : and in other cases than those of parish apprentices, clothes are generally provided by the friends of the apprentice. But if every thing is to be valued, and a duty set upon it, from which a benefit arises to the master, it might be equally said that the earnings of the apprentice should be liable to the duty. The argument, therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Aston, J.* is in all cases worth resorting to, but particularly so in cases of sessions' law, in which he was remarkably conversant. And his opinion in the case alluded to is very strong to this point. I think, therefore, that the *clear meaning of the statute of Anne is, that where money or money's worth is given to the master by the friends of the apprentice, by way of premium, a duty ought to be paid for it ; but where meat, clothes, &c. are to be provided for the apprentice, no duty is payable, because there is not any thing given to the master.*" *Buller, J.* "The terms of the s. 32 refer to something which is given to the master or contracted for, and only apply to cases where the master is to derive a benefit from the friends of the apprentice, independent of the benefit to be derived from the apprentice himself ; and, therefore, whatever is given for the advantage, benefit, and accommodation of the apprentice, does not fall within the clause. *Grose, J.* concurred. Order of sessions quashed.

Rex v. Aylesbury, 3 Bar. & Adol. 569. On appeal against an order of removal from Aylesbury to Leighton Buzzard the sessions quashed the order, subject to the opinion of the court on the following case :—The pauper, on the 4th November, 1823, was bound apprentice by the trustees of a public charity to W. Fryer, for seven years. The master covenanted to find the pauper meat, drink, apparel, washing, lodging, and all other things needful during the apprenticeship. Before the indenture was executed the father of the pauper, who was no party to it, agreed with the master to find the pauper clothing and washing during the term, and he accordingly did so during great part of the time ; and the clothes and washing so supplied might amount to 10*l.* in value. The master said he would not have taken the pauper unless the father had made such agreement. There was no evidence that the trustees of the charity were privy to this arrangement. The indenture was not stamped, and it was objected by the appellants, that the apprentice had not been bound by or at the sole charge of a public charity, and therefore that the want of a stamp rendered the indenture invalid, and the sessions allowed the objection. The question for the opinion of the court was whether the

6. *Of the Premium, &c.*

A pauper was bound apprentice by the trustees of a public charity. The master covenanted to find meat, drink, apparel, washing, &c. Before the execution of the indenture the father of the pauper, who was not a party to the agreement, agreed with the master to find the pauper clothing and washing during the term, and he did so : Held, that the indenture did not require a stamp.

6. *Of the Premium, &c.*

indenture ought to have been stamped under the statute 55 Geo. III. c. 184. By Lord Tenterden, C. J. "I cannot distinguish this case from *Rex v. Leighton*, 4 T. R. 732 (*ante*, 500), where this point seems to have been very fully considered. That case turned upon 8 Anne, c. 9, s. 45, the words of which are very similar to those of 55 Geo. III. c. 184, schedule, part i. tit. (Apprenticeship), and the decision proceeded on the ground that there was no obligation on the part of the master, in the absence of express stipulation, to provide clothes or sustenance for an apprentice, and therefore that the agreement so to do by the father could not be considered a benefit to the master; and the concluding words of Lord Kenyon's judgment apply to this case (*ante*, 500). It is urged that this case is distinguishable, because there the father covenanted in the indenture to provide clothes, &c., but that here the benefit is given to the master by the father's agreement, independent of the indenture. But that agreement being prior to the indenture, if it was made without the knowledge of the trustees of the charity, it was a fraud upon them, and therefore void, even if the providing clothes could be considered as any thing given to or for the benefit of the master; but I think that the agreement by the father to provide clothes cannot be considered as having that effect." *Littledale, J.* "I think this case falls within the case of *Rex v. Leighton*." *Parke, J.* "It is said that there is a benefit conferred on the master by the agreement of the father to provide clothes, and that this is equivalent to a sum of money. Assuming it to be so, the agreement was then a fraud on the trustees of the charity; for it is clear from the covenant in the indenture, that they bound out the pauper on the faith that the master was to find apparel, &c. (see *Rex v. Baildon*, 3 Bar. & Adol. 427, *post*, 501), and the latter could not have sued the father for not providing clothes, for there was no binding engagement on him to do so." *Patteson, J.* concurred. Order of sessions quashed.

A master stipulating for part of the apprentice's earnings, is not a consideration within the statute.

Rex v. Wantage, 1 East, 601; 1 Bott, 559. The pauper, T. Smart, was bound apprentice to a ropemaker for seven years. The indentures were lost, but it appeared that the pauper was to find himself in clothes, board and lodging; the master was to allow him full journeyman's wages, but was to have 4d. out of every shilling of the pauper's earning. The indentures were stamped, but no duty was paid for any consideration reserved to the master. Lord Kenyon, C. J. said, "It was impossible to argue that a part of the apprentice's earnings reserved to the master was a benefit to him within the meaning of the statute, when by law he was entitled to the whole, and might be rather considered to have given up that part which he did not reserve, than to have acquired any thing."

Where the stamp duty is on the sum contracted for, and that sum is inserted in the indenture, though a less sum be actually paid by the apprentice, still the indenture is good, and service under it gains a settlement.

Rex v. Keynsham, 5 East, 309; 1 Bott, 560. The pauper, in October, 1791, was bound apprentice for seven years, to J. C., at Bath. Five guineas was agreed to be paid by the father to the master as a premium, and was the sum inserted in the indenture. The only sum paid was the sum of four guineas, which was paid at the time of executing the indenture. *Grose, J.* "We must attend to the intention of the legislature, which was to raise a revenue; for this purpose the act requires, (s. 35,) 'that the full sum of money received, or in anywise directly or indirectly given, paid, agreed, or contracted for, with the apprentice, shall be truly inserted,' under a certain penalty. By s. 39 the indenture is avoided, 'if the sum received, given, paid, secured, or contracted for,' be not so truly inserted. By requiring the full sum to be inserted, it meant that not less than the sum upon which the duty was really payable should be inserted. Here, not only the full sum, but more than the sum for which the duty was payable, has been inserted, and the duty paid upon such larger sum. Then more than the act required has been complied with." *Lawrence, J.* observed, "that he saw no reason why the master might not recover the remainder of the five guineas in an action." (See *Rex v. Quinten*, 2 M. & Sel. 338, *post*, 519.)

Indenture, with covenant to allow the master two shillings a week, and the appren-

Rex v. Bradford, 1 M. & Sel. 151. Removal of T. Holgate from Bradford to Thornton. Order discharged. Case:—The pauper, being twenty-one years of age, by indenture of the 3d of April, 1805, bound himself apprentice to D. Fawcett, of Bradford, for three years and twenty-one weeks by an in-

indenture. The pauper agreed to allow his master 2s. per week, and to have (leaving a blank) wages, and to provide for himself for the term. The pauper served his master for the term in Bradford, and the 2s. a week were deducted out of the wages he received during his service. The indenture was upon a 15s. stamp, and it was objected that the 44 Geo. III. c. 98, required a stamp of 1l. 10s., and therefore the indenture was void. Lord *Ellenborough*, C. J. "If the words of the covenant were transposed, they would run thus: the pauper to have wages and to allow his master 2s. per week; and then there would be no doubt of their meaning an allowance out of the wages simply; and what difference does the order in which they now stand make in the sense? It therefore can never be considered as a boon to the master, who, instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2s. per week out of them." *Le Blanc*, J. "The master had a right to the whole of the earnings, but allows, by way of wages, such a sum as they are computed at, minus 2s. per week, on account of his providing for himself."

Rex v. Bourton-upon-Dunsmore, 9 B. & C. 872. Order of removal of H. Webb, &c. from Stretton-upon-Dunsmore to Bourton-upon-Dunsmore. Confirmed. Case:—The pauper resided in a third parish more than forty days, under an indenture of apprenticeship: it was contended that this was void upon this evidence. The mother of the pauper (who was illegitimate) was deserted by her husband, not the father of her child: he gave a premium of 10l. and no more; the master required 20l.; this the mother refused, but they came to a private understanding that he should receive something besides the 10l., but the particular sum did not appear. It was agreed that 10l. should be inserted in the said indenture, which was done; the step-father paid the 10l., and the mother paid him further two-and-a-half guineas; neither the apprentice nor the step-father knew of the private understanding, and never knew that a greater sum than 10l. had been paid, but the master was not aware that the agreement of the mother was without the privity of her husband. The indenture had the proper stamp for any sum not exceeding 30l. *Bayley*, J. "The sum really and *bonâ fide* paid and contracted for, was inserted in the indenture. There was no binding agreement for any sum beyond that amount; the promises made by the *feme covert*, did not bind her." *Littledale*, J. "Assuming that the contract was binding, there was no contract to pay a specified sum, so that it was impossible to insert in the indenture the sum paid." *Parke*, J. "The Stamp Act attaches on the specific sum given, paid, secured, or contracted for. As soon as the master executed the indenture, he became bound to take the apprentice. 10l. was the only sum given, contracted, or agreed for. The promise to pay the extra sum was a mere honorary agreement." Order of sessions quashed.

Rex v. Baildon, 3 Bar. & Ad. 427. The consideration expressed in an indenture of apprenticeship was 4l., to be paid to the master by a public charity; but the apprentice's mother privately agreed to pay, and did pay the master after execution of the indenture, 1l. in addition. Held, that the indenture (though stamped) was void, by 8 Anne, c. 9, s. 39, the full sum contracted for with or in relation to the apprentice not being inserted. (But see *Rex v. Aylesbury*, 3 Bar. & Adol. 569, ante, 501.)

In *Rex v. Amersham*, H. T. 1836, a person paid 15l. to the master; but the fact was unknown to the trustees, who were the parties to the indenture. The 15l. must be mentioned in the indenture or the apprentice will not gain a settlement.

6. Of the Premium, &c.

tice to have wages and provide for himself, does not require the additional stamp.

A step-father agrees to give ten pounds as premium; the mother secretly promised more; ten pounds was inserted in the indenture: Held sufficient.

When void for not stating full sum contracted for.

7. THE STAMP DUTY ON THE DEED, WITHOUT REGARD TO THE PREMIUM. (a)

Rex v. Llanvair Dyffryn Clwyd, Burr. S. C. 236; 1 Bott, 647. J. Edwards, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. And it was ruled, that the indenture, not being

7. The Stamp Duty, &c.

The indenture must be stamped, otherwise it is not admissible in evidence.

(a) See division of the subject, ante, 451, and the last head, ante, 494.

7. *The Stamp Duty, &c.*

stamped, could not be given in evidence at all, being absolutely void to all intents and purposes.

Rex v. Mabe, 5 Nev. & Man. 241. Upon appeal against an order of two justices of the borough of Penryn, for the removal of Nicholas Halvosso, his wife and children, from Penryn to Mabe. Case:—By indenture duly executed, dated 16th October, 1799, and since lost, Nicholas Halvosso, then being about fifteen years of age, was bound apprentice, with the consent of his surviving parent, to Thomas Bolitho, of the parish of St. Gluvias, tanner, until he should attain the age of twenty-one; no sum of money or value was given or contracted for with or in relation to the said apprentice; the said indenture was stamped with the several stamps impressed on indentures of that class by the several statutes prior to 37 Geo. III. c. 111, amounting to 10s.; but the sessions considering it liable, under that act, to an additional stamp duty of 10s. held that it ought not to be received in evidence, and confirmed the order subject to the opinion of the Court of King's Bench. Lord Denman, C. J. "This is an evident *mistake* in the act, but we have no power to correct a mistake of the legislature. According to the only construction which we can put on this proviso, it operates to exempt only money contracts, (or contracts for other valuable consideration,) of a certain limited amount." The other judges concurring, order of sessions confirmed.

Same point.

Rex v. Holbeck, Burr. S. C. 198; 2 Bott, 864. P. Orange, the pauper, was bound a parish apprentice by indenture; but the indenture was not stamped. The 5 & 6 W. & M. c. 21, s. 11, lays a duty of 6d. upon the indenture of a parish apprentice; and enacts, that such indenture shall not be given in evidence, nor be available in any court, till the duty and also a penalty of 5l. be paid, and the parchment or paper stamped. By the court: This indenture was necessary evidence to make out the proof of a binding by indenture; for that binding could be no otherwise proved but by the indenture, and the indenture, being unstamped, could not be admitted as evidence, and the justices ought to have paid no regard to it.

The stamp formerly must have been of the proper kind as well as value; even though the stamp used was higher than that required, and applicable to the same kind of instrument. But by 55 Geo. III. c. 184, s. 10, all instruments upon which any stamp shall have been used of an improper denomination or rate of value, but of equal or greater value than the regular stamp, shall be valid, unless the stamp is specifically appropriated to any other instrument by having its name on the face thereof.

An apprenticeship to two masters, to serve them consecutively in two distinct trades, is valid, and requires only a single stamp.

Rex v. Louth, 2 Man. & R. 273; 8 B. & C. 247. The pauper, Benjamin Furnish, was, in 1780, bound apprentice to his father, Thomas F., a woolcomber, and to J. Grozer, a weaver, *not co-partners*, by indenture duly executed by all parties, upon which there is only one 5s. stamp. The indenture was made between Grozer, weaver, Furnish, woolcomber, and the pauper. The pauper of *his own free will*, and with the consent of his parents, bound himself apprentice with Grozer and Furnish, and with them as apprentice to dwell and serve from the date thereof for seven years; the apprentice his said *masters* well and faithfully would serve; hurt to *masters* shall not do; the goods of his said *masters* shall not waste; nor from his *masters'* service at any time absent himself; but as a true apprentice shall behave himself towards his said *masters* and all his; and a just account of all his *masters'* goods, committed to his charge, faithfully should give his said *masters*: and Grozer did covenant with the pauper that Grozer and Furnish, his executors, &c. should teach him in the trade of stuff-weaving and woolcombing, which the said *masters* then used; and also should provide for the apprentice sufficient meat, and John Grozer to provide him meals and lodgings for the first four years; (to and not exceeding eight hanks per day, and to have four hanks allowed for looming; to have three days each year for himself, and to have four shillings for a low count, if he works any over-work, and so in proportion;) the apprentice to serve the latter three years with T. Furnish; (and not to exceed five pound per day;) the said apprentice to receive one shilling per year wages; and Grozer to be absolutely free from the apprentice at the end of four years from the date thereof; and the said apprentice not to have above

three days if he should have to stand for work. The pauper served and resided under such indenture at Leeds for four years and three months, and then removed to Louth. *Bayley, J.* "It was formerly supposed that under the statute of the 5 Eliz. c. 4, an apprenticeship for less than seven years was void. The effect of that statute was, that certain benefits attached on a seven years' binding before 57 Geo. III. But the indentures are voidable only at the election of the parties, and, therefore, a binding for four years had been held to confer a settlement. It appears to me that this is a valid indenture to constitute the party an apprentice for seven years. There is certainly a degree of peculiarity about it. In ordinary cases, the party is bound for seven years, to serve one master and learn one trade. In seven years, a party may have time to learn two distinct trades; and the acquisition of one may materially assist the party in practising the other. The father, of course, is anxious that his son shall learn as much as possible, and that he shall also be under proper control. The object was to acquire instruction. The father prevails upon a master to take his son for less than seven years; but, at the same time, he wishes to provide a person who shall stand in the relation of master to his son during the remainder of that period. He might not wish to take an assignment. This is nothing more than a stipulation, and, in my opinion, a reasonable one, that there shall be an apprenticeship for seven years, during which the apprentice shall be learning two trades; and that one period shall be fixed for learning one trade, and another for another. The whole is one transaction, and requires only one stamp." During the argument, *Bayley, J.* observed that "the circumstance of the binding being for seven years was important." *Holroyd, J.* "The contract is for a certain period, though the apprentice was to serve two masters, who carried on different trades. It will be a good contract if the apprentice is bound to two masters, to learn successively two different trades. The next question is, whether the indenture is rendered void by the stamp act. I am of opinion that it is not void, unless it be shown that the parties adopted this particular form to evade the payment of duties, which by law they would otherwise be bound to pay. Unless that be shown, I think we should construe the indenture so as not to avoid it. Now if it was *bonâ fide* agreed between the father and first master, that his son should have the benefit of a seven years' apprenticeship, that the father should take him at the end of the first four years, he would take him under the indenture, and no new stamp would be necessary. The duty is imposed on every indenture, not with reference to the number of masters, or the number of trades. No fraud being found, I think this is but one binding and one indenture. There may have been two bindings, as far as the masters are concerned, but so far as the apprentice is concerned, there was but one; he was bound by an indenture to serve one master for four and another for three years." *Littledale, J.* "Suppose that, before the 5 Eliz., a parent, intending that his son should learn two trades, (connected or unconnected,) and had agreed with two persons that each should teach him a trade, there would be no objection, at common law, to the two persons taking the apprentice successively. The statute confers privileges on persons who serve for seven years, but it does not render other contracts void. By the stamp act, a duty shall be paid on every indenture, not a distinct duty in respect of each master or each trade. This instrument does not operate as two indentures, or as an indenture and assignment, so as to require two stamps. There was no intention to evade the stamp duties. It relates to one transaction. And if it was originally agreed that the father should take the apprentice at the end of four years, he took him by virtue of the indenture, and not of the assignment.

The 7 & 8 Geo. IV. c. 56, s. 17 (*ante*, 483), enacts, that only two shillings shall be charged upon the indenture of any apprentice to serve at sea in the merchant service.

8. *Of the other Essentials of the Contract.*

8. OF THE OTHER ESSENTIALS OF THE CONTRACT, AND THAT AN IMPERFECT APPRENTICESHIP CANNOT OPERATE AS A HIRING AND SERVICE. (a)

Where parties *intend* to create the relation of master and apprentice, the contract entered into between them for that purpose can have no force with reference to the law of settlements, but as a contract of apprenticeship; and therefore if their contract, from any defect of form or substance, falls short of what it purports to be, it is not available as a contract of *hiring and service*. If it has not *all the legal requisites of an apprenticeship*, it is an absolute nullity; and the ingredients to constitute a *hiring* for a year, or a term of years, cannot be picked out of such a contract, so as by a service under it to entitle the party to a settlement (*ante*, 393).

The defects of *form* which are fatal to the right of settlement by apprenticeship, have been exhibited in the preceding cases: it remains to be seen in what manner the *contract* itself will be insufficient to establish a settlement of this description.

If the intention be to create an apprenticeship, and the indenture is void, it confers no settlement.

Salford v. Storeford, 2 Barnard. 39; 2 Bott, 363. Order of removal confirmed. Case:—Lineacre had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship at Salford; the indenture was not stamped. The justices judged this to be a good settlement by way of service, though not as an apprenticeship. But the court held this to be no settlement, on the authority of *Cuerden v. Leyland* (*ante*, 495), and quashed the order.

Where one is taken as an apprentice, but the indentures are not executed, it cannot be converted into a hiring and service.

Rex v. Whitchurch Canonorum, Burr. S. C. 450; 2 Bott, 368. The pauper, being of the age of twenty-two years, agreed with a stone-mason that he should take him apprentice for six years, to teach him the trade, and that the indentures should be executed accordingly. He went and served five years, when they parted by consent: no indentures were executed. It was contended that this was good as a hiring and service. By the court: "Here is no hiring, expressed or implied. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other." *Rex v. St. Mary Kalendar, Winchester*, was mentioned as in point.

Where an unstamped agreement recited that the pauper is to be bound apprentice, it was held that no settlement was gained.

Rex v. All Saints in Hereford, Burr. S. C. 656; 2 Bott, 370. The pauper, Abraham Lewis, when a boy, together with his father, entered into an agreement in writing, not stamped, with Mrs. Tringham of All Saints, reciting, that "whereas the boy, with the consent of his father, is to be bound apprentice to her for seven years;" she agrees to pay the boy 25s. the first year, the four following years 50s. each, the sixth year 3*l.*, and the seventh year 4*l.* He served her two years, and received the money agreed on for the time, then left his mistress; no indenture was executed. By the court: "An apprenticeship was certainly the thing in view; but no indenture was executed; nor could the agreement be esteemed to supply the want of it, as it was not stamped. Nor can it be considered in the nature of a service; for in that case there must be a hiring for a year, and a service for a year under such hiring. And the binding as an apprentice cannot be converted into the hiring as a servant."

If A. serve seven years as an apprentice, and there be no indenture, he cannot gain a settlement, either as an apprentice or yearly servant.

Rex v. Margram, 3 T. R. 378; 2 Bott, 378. The pauper's mother had made an agreement with Mr. Tyler, agent for the English copper company, who lived in Margram, for him to serve seven years as an apprentice; and he served in the copper works for eight years, and learned the trade of a refiner, and received weekly wages; as also 20s. a year, as a refiner, and he conceived himself serving as an apprentice, but he signed no indenture or agreement whatsoever, nor was any signed by any other person on his behalf, or to his knowledge. The court, without hearing any argument, were clearly of opinion that this servitude as an apprentice, could not be converted into a service under a hiring.

If, for fraudulent

Rex v. Highnam, Cald. 491; 2 Bott, 371; S.C. Doug. 238. The pauper, at

(a) See the division of the subject, *ante*, 451, and as to imperfect apprenticeships not operating as a hiring, *ante*, 393.

seventeen years of age, went to W. Evans, of St. Mary de Crespt, in Gloucester, carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter; but to save the expenses of indentures and duty, (four guineas' consideration being paid by the pauper to his master,) he and his master agreed to sign an agreement on *unstamped paper*, which was accordingly done. Lord *Mansfield*, C. J. and the court held, that it was clear that a fraud was intended; that the pauper meant to be an apprentice and defraud the revenue; and that therefore no settlement could be gained by service under such circumstances.

Rex v. Laindon, 8 T. R. 379. Order of removal of J. Claydon from East Horndon to Laindon, confirmed. Case:—The pauper went to Ingrave in November, 1792, and after being one month upon trial with J. Mander, a carpenter, in East Horndon, he entered into this unstamped written agreement: "November 20th, 1792, I, John Mander, do hereby agree with J. Claydon to serve me three years to learn the business of a carpenter; the first year to have 1s. 2d. per day; the second year to have 1s. 6d. per day; the third year to have 1s. 10d. per day: witness my hand, J. Claydon, J. Mander. Witness, Robert Beles." The pauper proved that at the time of signing the agreement, he agreed to give Mander the sum of three guineas as a premium (a) to teach him the said trade, and paid Mander 1l. 15s., which, with 1l. 8s. due for wages during the month of trial, made the three guineas; and that he was not to be, and was not employed in any other work than that of a carpenter. The pauper worked with and served Mander under this agreement the whole three years, and slept the last forty nights in East Horndon, and considered himself as an apprentice under the agreement; but he thought himself at liberty to leave his master if he used him ill. The parol evidence, explanatory of the agreement, was objected to, but received. Lord *Kenyon*, C. J. "The justices who made this order, and the justices who confirmed it, were of opinion that the pauper was not hired to serve Mander as a yearly servant, but that the relation which was created between them, was that of master and apprentice. The opinions of the magistrates ought not indeed decidedly to influence our judgment, as they have referred the case to us; but when a certain opinion has gone abroad, founded on the decisions of this court, upon which magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is, on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact, and I think it was properly received in evidence. That being so, the case appears to be shortly this: in consideration of three guineas paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject; but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that *if two persons intend to enter into the relation of master and apprentice, and owing to some circumstance the relation of apprenticeship is not duly constituted, as if the indentures be not stamped, this shall not change the condition of the parties; if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves.* But when it is urged that this relation can only be formed by using the term "apprentice," it may be observed that the argument would lead to an absurd consequence: for then if the word "*clerk*" were used in regular indentures of apprenticeship, the clerk would not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine* as an apprentice; but it would be a disgrace to our laws, if we were obliged to decide according to words, without considering their

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reasons, the indenture is not completed, no settlement can be gained under it.

A contract of apprenticeship may be formed without using the word "apprentice;" but a defective contract of apprenticeship cannot be converted into a contract of hiring and service, so as to give the apprentice a settlement.

(a) The fact of giving the premium, seems to be material, as showing the service to be under an intention of apprenticeship.

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meaning. It was properly said by Lord *Hardwicke*, that 'there is no magic in words;' and he said this not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. *If the relation of master and servant be created by the contract of the parties, though they do not use the very words tantamount, it is sufficient.* In this case, a premium was paid by one man to another who engaged to teach him a trade: now, what is that but an apprenticeship? The term 'apprentice' is taken from the French word *apprendre*, to learn. Unfortunately, Lord *Mansfield* did not adhere to his first opinion in *Rex v. Little Bolton* (*ante*, 393); but even when he gave his second opinion in that case, he took it for granted that the rule remained unshaken; that if the parties *intended* to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly servant: and in *Rex v. Highnam* (*Cald.* 491, *ante*, 506), Lord *Mansfield* adopted the opinion he had first given in *Rex v. Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case, and if it be not distinguishable from that of *Rex v. Little Bolton*, it is sufficient to say that it is subsequent to it, and that *Rex v. Little Bolton* is an anomalous case. When we find the current of authorities one way, I should be sorry that a little inadvertence in the court, in the decision of one case only, should be supposed to break in upon the general rule. For *Rex v. Coltishall* (*ante*, 394), which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties, the pauper was to *do any work* that the master set him about. I am, therefore, most clearly of opinion, that in this case the parties intended to form the relation of master and apprentice; and that as that relation was not legally constituted so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant, so as to give him a settlement as a yearly servant. And I think we should do infinite mischief, if we were to overturn that which has been so long a settled rule." *Lawrence, J.* "The first point is, that the sessions ought not to have received the parol evidence, because it contradicted the written agreement; but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. The fact being established, the case was this: on the one hand, the pauper paid a premium to the master, and was to receive certain wages: and on the other hand, the master engaged to teach him the business of a carpenter; then the question is, whether or not by this agreement the parties were to stand in the relation of master and apprentice, of which I think no doubt can be entertained. In *Rex v. Little Bolton*, Lord *Mansfield* only went thus far: that it must be collected from the words of the instrument, whether or not the party is to serve as an apprentice; his lordship could not mean to say that a contract of apprenticeship could not be formed, so as to give a settlement to the party serving under it, without the introduction of the word 'apprentice.' With regard to the instance put at the bar, of servants at inns, it is to be remembered that they do not pay their money in order to learn a trade, but as a premium to the master to let them have the perquisites of that situation: but in the case of a trade, the relation of apprenticeship is created for the very purpose of the party being instructed in that trade: the two cases do not bear the smallest resemblance to each other. Therefore, there does not appear to me to be any reason for shaking the authority of *Rex v. Highnam*, especially as the great body of cases support it. It is much to be lamented, that settlement cases should ever have been determined on nice distinctions; it would be better to decide them on some general rule, that every person who reads may understand it." *Le Blanc, J.* "If the master, in consideration of a premium, engage to teach the other his trade, it is the same as if he agree in express words to receive him as an apprentice and teach him his trade." Orders confirmed.

A perfect apprenticeship may be constituted with-

Rex v. Rainham, 1 *East*, 531; 2 *Bott*, 383. Order of removal of Moses Smith from Rainham to Eltham quashed. Case:—The pauper, on the 8th of November, 1784, entered into the following agreement with Hills,

a sawyer, living in Eltham. "An agreement made the 8th of November, 1784, between J. Hills, sawyer, and M. Smith; viz. Smith doth agree with J. Hills to serve him for three years from the date of the agreement; viz. for the first year 10s. per week; for the second year 11s.; and for the third year 12s. per week; and J. Hills doth agree and promise to learn M. Smith the art of a sawyer, which he now follows: and it is agreed that if Smith shall wilfully lose any time to the prejudice of Hills, he agrees to pay Hills 3s. per day for all such neglect. If Smith repents of this agreement before the time expires, he promises to pay Hills 10*l.* on demand; or if Smith is sick, or by any disorder or misfortune rendered incapable of work, not to receive any pay from Hills." The agreement was signed and sealed by both parties, and stamped: no premium was paid by the pauper to Hills. The pauper immediately went to Hills, and resided with him in Eltham for two years and a half. Lord *Kenyon*, C. J. "The sessions have stated the deed and the service under it in fact, leaving this court to draw the conclusion: and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented. It has been determined, that the party serving need not be retained *eo nomine* as an apprentice; but that *it is enough, if the purpose of the contract be, that the one shall teach and the other learn the trade.* That is the case here; for the master engaged to learn, *i. e.* teach the pauper the art and mystery of a sawyer, and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master."

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Rex v. Bilborough, 1 B. & Ald. 115. Where by a parol contract the master agreed to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c. and the pauper went to learn the business, and continued in the service a year and a half: it was holden that the pauper did not gain a settlement by hiring and service. Lord *Ellenborough*, C. J. said, "In this case the pauper never contracted to serve the master; the only agreement was that the master should *teach* the pauper for a year. In *Rex v. Burbach* (*ante*, 396), there was an agreement on the part of the pauper to work for two years; that forms an essential distinction between the two cases." (See observations of *Patteson*, J. on this case in *Rex v. Newton* 1 Adol. & Ell. 238, *post*, 510).

A contract merely on the part of the master to teach, without any reciprocal engagement on the part of the pauper to work, will not confer a settlement, though there be actual service.

Rex v. Mountsorrel, 2 M. & Sel. 460. Order of removal from Mountsorrel to Quorndon quashed. Case:—When G. Swain, the husband, was about thirteen years old, his father made an agreement with one Rawlins of Quorndon, that R. should take his son for six years, to teach him the trade of a framework knitter, and he was to allow R. 9s. per week for the first three years, for teaching him and his board and lodging. G. Swain served R. six years in the whole in Quorndon. The court distinguished this case from *Rex v. Little Bolton* (*ante*, 393), inasmuch as by this contract the son was entitled to none of his earnings, and instead of receiving wages from his master, his master was to receive wages from him, as the price of teaching him: it was a hiring of the master to teach the apprentice. The whole contract with the father was bottomed and had for its object the instruction of the son, and nothing else. Order of sessions quashing the removal confirmed.

The father agreed that R. should take his son for six years, to teach him his trade, and he was to allow R. 9s. a week for the first three years, for his board, &c.: This was held a defective contract of apprenticeship, and gave no settlement.

Rex v. Crediton, 2 B. & Ad. 493. On appeal against an order of removal whereby Joseph Middlewich, his wife and children, were removed from the parish of St. Mary Major, in the city and county of the city of Exeter, to the parish of Crediton, in the county of Devon; the respondents proved a settlement by hiring and service in Crediton. The appellants then set up a subsequent hiring and service in a third parish, St. Edmund's. The sessions confirmed the order, subject to the opinion of this court on the following case respecting the alleged settlement in St. Edmund's. The pauper agreed with one West, a sawyer, of the parish of St. Edmund's, in the city of Exeter, for a twelvemonth, to learn sawing, and was to have 7s. 6*d.* out of every 20s. earned by his master and himself. He served out that year, providing his

Agreement for a year to learn sawing, and to have a portion of the earnings of himself and his master: Held, not a hiring and service, but a defective contract of apprenticeship.

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own board and lodging. At the end of the year he made a new agreement with West for another year, under which he was to receive 8s. out of every 20s. earned by his master and himself. Nothing was said about Sundays or the hours he was to work; but he was occasionally absent without permission from West. He lived out the second year with West in the parish of St. Edmund's. *Littledale, J.* "It seems to me the sessions came to the right conclusion. In all the cases cited there was some work to be done, though there was a contract to learn. This case falls within *Rex v. Bilborough* (1 B. & Ald. 115, ante, 509). There one Smith, by parol, agreed with the pauper to teach him to make stockings during the year, for which Smith was to receive two guineas, and the pauper was to have his earnings, paying the master for the use of the frame, &c. and it was held, that no settlement was acquired by living out the year under the agreement, for the pauper never contracted to serve the master, the only agreement was that the master should teach the pauper for a year. In *Rex v. St. Mary, Kidwelly* (4 D. & R. 309; 2 B. & C. 750; ante, 401; and post, 515), the father of the pauper agreed by parol to give a shoemaker a guinea a week, for teaching his trade to the pauper, for twelve months; and it was held, that that agreement created the relation of teacher and scholar, and not that of master and servant. In *Rex v. The Hamlet of Walton* (Carth. 400; 2 Bott, P. L. 267), the pauper was put out to a barber for one year to learn to shave, and the barber was to have the benefit of the boy's work, and received some money for teaching, and the boy lived with him for a year; it was held, that the boy was in the situation of a scholar, and not of a servant. On the other hand, in *Rex v. Hitcham* (Burr. S. C. 489), where the pauper agreed to let himself to his brother, who was a carpenter, for a year, and was to receive no money by way of wages, but his brother was to teach him as much as he could of the trade during the time, and provide him with meat, drink, washing, and lodging; and the pauper was to do all his brother's business in the farming way: that was clearly held to be a contract for service, and a hiring for a year. Here, as by the express terms of the contract, the pauper was to learn, an obligation on the part of the master to teach must be implied. The agreement for the second year is substantially the same as that for the first. The only difference is, that the wages are increased." *Parke, J.* "I think the sessions have put the right construction on this contract. To gain a settlement by hiring and service the pauper must have hired himself to serve for a year. Here, the relation of master and apprentice, not that of master and servant, was created. The case is not distinguishable from *Rex v. Bilborough* (1 B. & A. 115, ante, 509). There the contract was that the master was to teach the pauper; here it is, that the pauper shall learn; but if the one is to learn, it must be implied that the other is to teach. The only difference between the agreement for the first and that for the second year is that the wages were different, in other respects the contracts are the same." *Taunton, J.* "I am of opinion that the relation contemplated in this case was that of master and apprentice. The only difference between the first and second agreement is in the sum to be received by the pauper. What then is the purpose for which the pauper agreed to contract any relation with West? It is stated expressly in the agreement to be to learn sawing. I take the true distinction in these cases to be this, where teaching on the part of the master, or learning on the part of the pauper, is not the primary, but only the secondary object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service. In all the cases cited where the contract was so considered it appeared that the pauper agreed to work for his master, and the master undertook to teach him the particular trade in which he was conversant; but the teaching and learning were incidental, and therefore it was held to be a contract of hiring. But where teaching and learning are the principal object of the parties, though there was a service, the contract is considered to be one of apprenticeship." Order of sessions confirmed.

Rex v. Newton, 1 Ad. & Ell. 238. An order for removing John Stanley and family from Newtown to the Berriew was quashed. Case:—The pauper acquired a settlement in Berriew as a servant in husbandry. Immediately

Agreement by pauper for three years with a master manufacturer

on leaving such service, when he was 21 years old, and unmarried, and without child or children, he agreed by parol with John Williams, a master flannel manufacturer in Newtown, for three years, to learn the art of weaving flannels, and was to be paid by his said master one-half of what he could get, and to find himself meat, drink, clothes, washing, and lodging; and the master was to have the other half for teaching him the art of weaving. The pauper thereupon went and remained in Williams's employ six weeks, and during that time wove for him two pieces of flannel. The pauper then left J. W. by consent, and applied to James Evans, another master flannel manufacturer in Newtown, to take him on the same terms as J. W. had, and informed him of his having left J. W. and what the contract with him was, and how he had been employed by him, and particularly that he had been employed by him to make slays, and could throw the shuttle, but had had bad slays (*Slay* or *sley* a weaver's reed. See *Johnson's Dictionary* by *Todd*. That part of a loom which strikes up the work. *Ash's Dictionary*.) to work with; to which Evans said, that the pauper's having had bad slays to weave with would improve him, and as to throwing the shuttle it was no more than a tailor threading his needle; that he would take him on the same terms he had been with J. W., but for twelve months only, adding, that twelve months would be long enough if he was a good boy. The pauper agreed to go to Evans for twelve months *to learn the art of weaving*, and to give half of his earnings. The pauper went to Evans on the following day, and continued to weave flannels in his master's room, from his master's materials, and with his loom, to the end of the year, on the terms originally agreed upon. *The pauper could not leave nor be turned away during the twelve months*, and was paid by his master one-half of what he earned, and his master kept the other half for teaching him the trade. He found himself meat, drink, clothes, washing, and lodging, and lodged during the above time with his mother in the parish of Newtown. After his time was up with Evans he began to weave by the piece, then he had all he got, like other workmen. *Littledale, J.* "There has certainly been some undulation of opinion in the court at different times on this subject; but I think we are bound by the last decision. The present case is like *Rex v. Crediton* (2 B. & Ad. 493, *ante*, 509), but stronger; and there, as in this case, the pauper found his own board and lodging. On the facts of this case as found by the sessions I think the contract was for learning, and was not a hiring for service. In *Rex v. Eccleston* (2 East, 299, *ante*, 393), the contract was generally 'to serve.' Here by the agreement the pauper was to learn the art of weaving flannels, and the master was to have half his earnings for teaching. The master's observation that twelve months would be long enough if the pauper was a good boy, strongly shows the intention of the parties to have been teaching and learning, and their language throughout has the same tendency. If the master had gone into a different business I should doubt if he could have insisted on employing the pauper in it. I question whether he had a right to employ him in any thing but weaving flannels. Upon the whole, there is nothing here to show a hiring for the purpose of service; and I think that an apprenticeship was not merely the primary, but the only object of the contract." *Patteson, J.* "I cannot distinguish this case from *Rex v. Crediton* (2 B. & Ad. 493), and being bound by that authority we must decide accordingly. I confess I am also unable to distinguish the case from *Rex v. Burbach* (1 M. & S. 370, *ante*, 396); but I think that is overruled by *Rex v. Crediton* (2 B. & Ad. 493). The distinction between cases where the agreement is to work or to serve, and where it is to learn, seems to have been first distinctly taken by Lord *Ellenborough* in *Rex v. Bilborough* (1 B. & Ald. 116, *ante*, 509); yet in *Rex v. St. Margaret's, King's Lynn* (6 B. & C. 97; 9 D. & R. 160; *post*, 516), the same words are stated. In *Rex v. Edingale* (10 B. & C. 789, *post*, 512), where the agreement was held to be a defective contract of apprenticeship, the boy's agreement was to serve for four years, and that was held an imperfect contract of apprenticeship. I cannot reconcile the cases, but ever since *Rex v. Bilborough* (1 B. & Ald. 116), the current of opinion has been to consider agreements like the present as imperfect contracts of apprenticeship." *Williams, J.* "I agree in the opinion expressed

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to learn the art of weaving flannels, and after six weeks employment another similar agreement with another master for twelve months, which pauper served: Held, to be an imperfect apprenticeship, and that no settlement was gained.

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Agreement to serve for four years with a tailor, to learn his trade, to have meat, drink, &c. and 2s. 6d. a week the last two years: Held, to be an imperfect contract of apprenticeship.

by Mr. Justice *Lawrence* in *Rex v. Eccleston* (2 *East*, 302, *ante*, 393), of the importance in these cases of adhering to what has been once expressly determined. When the court begins to decide them on nice and evanescent distinctions infinite trouble is occasioned. The tendency of opinion latterly has been to treat agreements like this as imperfect contracts of apprenticeship; and without considering the several instances in which an inclination has been shown to depart from the doctrine laid down in *Rex v. Little Bolton* (*Cald.* 367, *ante*, 393), it is enough to say, that I think the present case is not distinguishable from *Rex v. Crediton* (2 *B. & Ad.* 493), and ought to be governed by it." Order of sessions quashed.

Rex v. Edingale, 10 *B. & Cres.* 739. Upon an appeal against an order of two justices, whereby H. Brown, his wife and children, were removed from Edingale to Clifton and Haunton, the sessions quashed the order, subject to the following case:—The pauper, H. Brown, before the death of his father, which took place about thirty years ago, when the pauper was ten or eleven years of age, had used to work with his father at his trade of a tailor. After the death of his father he was put by his mother, from time to time, to work with other tailors, who paid him for the work he did. At the age of fourteen he went to live with J. Tricklebank, a tailor, residing in Clifton and Haunton, under an agreement, the circumstances of which were as follows: The pauper first saw Tricklebank when he went over to his shop on an errand for a suit of black. Tricklebank said the pauper was just such a one as he wanted, he thought he would suit him. The pauper said his mother would like to make him an apprentice. Tricklebank said he would not take him apprentice, because if he did he should offend the farmers: he would take him on agreement for four years. A week after this, Thornton, the pauper's father-in-law, and the pauper, went over again to Tricklebank, and Thornton agreed with him that the pauper should serve him four years. He was to go to him to learn his trade, to have meat, drink, washing, and lodging the whole time, to receive no money for the first two years, but 2s. 6d. a week for the last two years. It was said at the time the agreement was made, that the pauper was to go to him to learn his trade. When the pauper had lived with Tricklebank under this agreement about a year and eight weeks, his father-in-law having neglected to supply him with clothes, Tricklebank agreed with the pauper to give him 1s. 6d. a week from that time for the remainder of the term, instead of 2s. 6d. a week for the last two years. In the third year the pauper having quarrelled with his master, ran away and went to his mother at Tamworth; upon which he was taken by Tricklebank before a magistrate, who made him return to his master, with whom he continued to live until the expiration of the four years, and remained four days over to make up the lost time. During the whole time that he thus lived with Tricklebank he worked at his trade of a tailor, and did nothing else. He slept in Clifton and Haunton during all the time. Lord *Tenterden*, C. J. "The question is whether the contract between the master and the pauper is to be considered a contract of apprenticeship, or of hiring and service? If that was a question of fact, as it may be, the sessions have decided it. If, on the other hand, it be a question of law for the decision of this court, I am of opinion the contract was one of apprenticeship, and not one of hiring and service. We must form our judgment of the nature of the contract from the substance of the bargain between the parties. It appears that when the pauper first saw the master the latter said he would not take him as an apprentice, because if he did he should offend the farmers; but at the time when the agreement was finally made between the master and the pauper's father-in-law, it was stated that the pauper was to go to him to learn his trade. That being the object of the parties expressed at the time of making the agreement, I cannot distinguish this from the case of *Rex v. Combe*, which followed shortly after that of *St. Margaret's, King's Lynn*, in which the master offered to take a boy to learn his business, and that being the object for which he was to be taken, the court thought that there was not sufficient to warrant the sessions in finding that the relation of master and servant subsisted between those parties." Bayley, J. "A plain intelligible

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rule is laid down in *Rex v. St. Margaret's, King's Lynn*, *post*, 516, which was acted upon in *Rex v. Combe* (*infra*), that where the substantial object of the parties to a contract is to learn, and not to serve, the contract should be deemed one of apprenticeship, and not one of hiring and service. In this case it is manifest that learning and teaching were solely in the contemplation of the parties at the time when the contract was made. The sessions, therefore, were right in coming to the conclusion that it was an imperfect contract of apprenticeship. If it were a mere question of fact, we ought, before we reverse their decision, to see clearly that there were not sufficient premises to warrant that conclusion." *Littledale and Parke, Js.* concurred. Order of sessions confirmed.

Rex v. Combe, 8 B. & C. 82; 2 M. & R. 30; 1 M. & R. Mag. Ca. 283. Order of removal of Joseph Davis from Presteign to Combe confirmed. Case:—The pauper's father, when the pauper was about fourteen years of age, was about to put him out to service, and took him to Presteign with the intention of hiring him, but he did not hire him. Shortly afterwards, one John Cole, a carpenter, residing in Presteign, and the brother of the pauper's mother, suggested that it was better for the pauper to go and learn his, Coles', trade of a carpenter, instead of going to service. At length Cole hired the pauper from his mother to learn his trade. The pauper was to do any other work as well as that of a carpenter. Cole was to find the pauper part of his food and part of his clothing, but he was to be lodged at his father's house. The pauper went to Cole, and served him for five years, lodging in Presteign with his parents, who provided part of his clothing and victuals. During the five years the pauper did any work Cole put him to do, as well as working at the trade of a carpenter. In the second and third year after the pauper had entered upon his service a conversation took place between the parties about indentures being drawn to bind the pauper to Cole until the age of twenty-one, in order to exempt the pauper from the militia. The indenture was to be drawn to bind the pauper till he was twenty-one; but it was understood that he was to be free at the end of five years, to be computed from the time of the original contract. No indenture was drawn nor any thing afterwards said upon the subject. At the expiration of the five years, (that being understood by the parties to be the termination of the original contract, whatever was the nature of it), the pauper agreed to work with his uncle Cole as a journeyman carpenter, under a weekly hiring, and to be paid weekly wages, the pauper boarding and clothing himself, and he was at liberty to go away at the end of any week. He continued with Cole under those terms, except upon one or two occasions varying the amount of the weekly wages, for nine or ten years. Judgment was delivered by Lord Tenterden, C. J. "The question in this case was, whether the pauper served in Presteign as servant or apprentice. It is clearly established, that if an apprenticeship only was contemplated by the parties, and there was an imperfect contract of apprenticeship, the service will not give a settlement. The case of *Rex v. King's Lynn* was relied on in that case, and the judgment of my brother *Holroyd* appears to me to apply to this. [He then quoted it, as *post*, 517]. We are of opinion, that all the circumstances of this case also lead fairly to the conclusion, that the parties intended to constitute the relation of master and apprentice. The parents at first proposed to send the pauper out to service, but the uncle suggested that it would be better that he should go and learn his trade. The object, therefore, clearly, from that moment was to put the pauper with his uncle as a pupil and apprentice, and not as a servant; and his service with his uncle was certainly not under any thing like an express contract of hiring, but under an imperfect contract of apprenticeship. We are, therefore, of opinion that the pauper acquired no settlement in Presteign, and that the order of sessions ought to be confirmed."

Pauper was "hired" by his uncle, a carpenter, "to learn his trade," and "was to do any other work as well as that of a carpenter." His uncle was to find him part of his food and clothing, but he was to lodge with his father. Pauper served his uncle on these terms five years. At the end of two years it was proposed to draw up indentures, to exempt pauper from the militia; but none ever were drawn up: Held, that this was not a contract of hiring and service, but an imperfect contract of apprenticeship, and that service under it conferred no settlement.

Rex v. Nether Knutsford, 1 Bar. & Adol. 726. On an appeal against an order of two justices, whereby George Hamond and his family were removed from Nether Knutsford to Pownall Fee, the sessions quashed the order, subject to the opinion of the court on the following case:—In 1814, the pauper, who was then about fifteen years of age, and his father, Thomas Webb, all residing in Nether Knutsford, agreed that the pauper, who had

Unstamped memorandum of agreement, whereby pauper was hired, and was to be taught the art and mystery of cotton weaving:

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Held, to be a defective contract of apprenticeship.

previously worked for Webb upwards of three weeks, should continue to serve him upon the terms contained in the following memorandum, except as afterwards altered:—"This memorandum, made the 1st day of December, 1814, between Thomas Webb, weaver, of Nether Knutsford, on the one part, and George Hamond, son of Peter Hamond, weaver, of Nether Knutsford, on the other part; viz. the aforesaid G. Hamond, of his own free will, together with the united consent and authority of his father, P. Hamond, aforesaid, doth covenant, promise, and agree to hire himself in the service of Thomas Webb, to labour at the art, mystery, trade, or business of a cotton weaver, for the term of three years, from the date above mentioned unto the first day of December, 1817; his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power; he will serve him justly, truly, honestly, and faithfully for the term of three years as above named. And the aforesaid Thomas Webb, on his part, doth covenant, promise, and agree with the above-named G. Hamond and P. Hamond his father, that, as a reward for all the honest and faithful labours of his son G. Hamond, in the above business, for the term of three years, he, Thomas Webb, will give him the one half of all his just earnings in the above business, according to the present prices, monthly, be they more or be they less; and, in addition to wages named, he will give him every other fent, (a part of inferior quality, usually cut off the end of a cotton piece,) on condition of having the free use of his father's fire for his son's accommodation the time he may want the same. And the aforesaid T. Webb, weaver, doth covenant, promise, and agree with the aforesaid G. Hamond and his father P. Hamond, that, as a complete compensation for all the industrious services of the aforesaid G. Hamond, he will instruct him (or cause him to be instructed) in all the art, mystery, calling, business, or trade of a cotton weaver, to the utmost of his power and ability so to do in the above term of three years above mentioned. As witness our hands, Thomas Webb, George Hamond, Peter Hamond." The memorandum was read over in the presence of T. Webb, the pauper, and his father, by Peter Bradburn, who had prepared it. Nothing was said about Sundays. At the word "hire" Webb gave the pauper a shilling, but nothing was said by either of them; and at the words "cause to be instructed" the pauper's father objected to them; whereupon Bradburn struck his pen through them, as appeared on the face of the memorandum. The pauper served T. Webb in Nether Knutsford, under this agreement, three years, and never did any other work for his master but weaving. At the expiration of two years, or thereabouts, Webb removed to Manchester, and the pauper remained in Nether Knutsford, and served the remainder of his time out with his father. The pauper lived and lodged with his father in Nether Knutsford during the whole time, and on Sundays he staid at home, and did no work for his master. Bradburn, who prepared the agreement, proved that no premium was given; and he was then stopped, by the court quashing the order. Lord Tenterden, C. J. "I am of opinion that this was a *defective contract of apprenticeship, and not a hiring*. We must look at the substance of the agreement rather than the precise words. The pauper is hired to labour at the art, mystery, trade, or business of a cotton weaver, for three years (and it does not appear from the case that any other duty was expected from, or was ever done by him); he promises the master that 'his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power,' in the terms usual in an indenture of apprenticeship. The master, on his part, undertakes to give him, as a reward for his honest and faithful labours, one half of his earnings; and he further covenants, as a complete compensation for all the industrious services of the said G. Hamond, to instruct him in all the art, mystery, or business of a cotton weaver, to the utmost of his power and ability. It appears to me, from the whole of the stipulations taken together, that the contract was for apprenticeship, and not merely for service. As to the promise 'to cause to be instructed,' which the father objected to, I should consider that to have been struck out not with a view to giving up any claim to instruction, but to prevent the boy from being handed over to another teacher." *Littledale, J.* concurred. *Taunton, J.* "I am of

the same opinion. And the parties themselves seem to have put the construction upon the agreement which we now do; for when Webb removed to Manchester the pauper is stated to have served the remainder of his time out with his father." Order of sessions quashed.

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Rex v. Tipton, 9 B. & C. 888; 4 M. & R. 703. Order of removal of James Smith, &c., from Birmingham to Tipton, confirmed. Case:—The pauper made a written agreement with James Thompson, glazier, of King's Norton, to this effect. An agreement made in 1822, between the pauper of one part, son of Jacob, and Thompson of the other. Jacob and James severally agreed that James should serve Thompson as an *articled servant* for four years, to learn his art or trade of glazier, &c., at the wages of 6s. a week in the first year, with a progressive increase. It was agreed that James should be considered as an *out apprentice*, and James and Jacob were to provide James with food and clothing. James was to do gardening, or any other work his master should set him about. In case James was unable to work, or was absent, no wages for the time were to be paid. James was faithfully to do all his master's business, and Thompson agreed to *teach and instruct* him in the trade of a glazier, &c. This agreement was signed and attested, but not sealed or stamped. The pauper served under it more than a year. On a subsequent day, *Bayley, J.* delivered the judgment. "The character in which the pauper was to act is described both as that of an *articled servant* and of an *apprentice*. We must therefore look to the whole of the instrument, to see what relation the parties contemplated. Now, first, it was not usual for a father to be a party to a contract, whereby his son (of full age) contracts to serve. The fact of the pauper having contracted to do gardening, or any other work, does not necessarily show that the parties contemplated a mere hiring. In *Rex v. Combe*, *ante*, 513, the pauper was to do any other work beside that of a carpenter; and yet that contract was considered to be an imperfect contract of apprenticeship. So the stipulation to pay wages does not necessarily imply that the parties contemplated the relation of master and servant. Then the master undertook to teach his trade to the pauper. Learning the trade, therefore, was one great object of the contract. There is a provision in the instrument, that if the pauper should be ill, the master should not pay him wages. That is not an improper stipulation in a bargain for an apprenticeship: but the law imposes on the master the obligation of providing for a servant during illness: there are some circumstances tending to show that the parties contemplated a contract of apprenticeship, and others that they contemplated a contract of hiring. But on the whole, as it appears that the main object was, that the pauper should learn the trade of a plumber, and as the sessions might have thought the wages too low for a servant, we think, though the case admits of great doubt, that this was an imperfect contract of apprenticeship." Order confirmed.

A., an adult, with his father, agreed to serve B. as an *articled servant*, to learn his trade, and be considered an *out apprentice*, to do any work; wages to be deducted during illness or absence. B. agreed to teach him: Held, an imperfect apprenticeship.

Rex v. St. Mary, Kidwelly, 2 B. & C. 750; 4 D. & R. 309; 2 D. & R. Mag. Ca. 291. Williams was removed from Kidwelly to Llandevilog. Order quashed. Case:—When the pauper was about fourteen years of age he lived with his father in St. Ishmael, and being desirous of being apprenticed to a shoemaker, his father agreed with a neighbour, named J. Thomas, a shoemaker in the same parish, to give him a guinea for teaching his son the trade of a shoemaker for twelve months; the father finding the pauper lodging, and every thing else during that time. The pauper served the twelve months under that agreement. There was no indenture or writing, but the pauper considered it as an apprenticeship, and his father and master treated and spoke to him as an apprentice during the twelve months, and both told him there was a guinea paid for teaching him the trade. The pauper's father, at the end of the year, came to an agreement with J. Thomas, that the pauper should work with him for twelve months, making shoes at 3d. per pair the first half year, and at 4d. per pair the remaining half year. The pauper worked with J. Thomas about six months under that agreement, and then went away and worked at several places, until his marriage, which happened in 1785. He soon afterwards went to St. Mary. *Bayley, J.* "There is in this case a contract of hiring in the second instance, and if the

Where, by a parol contract, the master agreed to teach the pauper the trade of a shoemaker for twelve months, for which the master was to receive a guinea, the pauper's father finding him board and lodging during the time; and at the expiration of the year, the pauper entered into a fresh agreement to work with his master for twelve months, making shoes at three pence per pair the first half year, and at four pence per pair the re-

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maining half year, and at the end of six months he quitted the service altogether: Held, that there was not a connected hiring and service, so as to confer a settlement.

A shoemaker proposed to the mother of a pauper, a boy, to take him to learn his business. The boy was to serve four years, was to board and lodge with his mother, and was to have half what he earned. The mother consented, and the boy served four years upon those terms. No indentures were executed, on account of the poverty of the mother, and no premium was paid. Held, that this was not a contract of hiring and service, but a defective contract of apprenticeship, and that the pauper gained no settlement by service under it.

service under it can be connected with the service of the preceding year, a settlement was gained. In order to gain a settlement by hiring and service, I take it that the service must be under some contract creating the relation of master and servant. Here the first contract created the relation of teacher and scholar, and the service under it cannot be coupled with the subsequent service. *Rex v. Bilborough*, ante, 509, is an authority in point. There the pauper's father agreed with one Smith that he should teach the pauper to make stockings during the year next ensuing, and should receive the sum of two guineas for such instruction; and it was further agreed that the pauper should have his earnings, and pay Smith for the use of his frame, needles, and other utensils, and for seaming such stockings as the pauper should make. The pauper stayed a year and a half; and therefore if that was a relation of which it could be predicated that there was service performed in the character of servant, it would have been sufficient to confer a settlement: but the sessions thought there was no settlement, and a case being reserved, this court confirmed their decision, on the ground that the relation between the pauper and his master was merely that of teacher and scholar, and not that of master and servant. In this case there was no obligation on the part of the pauper to serve; he was only to be taught; the master could not have punished him for neglecting to serve. Although service under different hirings may be connected, the whole of the several services constituting the year's service must be under a contract creating an obligation to serve. Therefore, inasmuch as in this case there was no relation of servant, and no obligation to serve until the hiring for a year commenced, and there being only a service for half a year under that hiring, no settlement was, in my opinion, gained." *Littledale*, J. concurred.

Rex v. St. Margaret's, King's Lynn, 6 B. & C. 97; 4 D. & R. Mag. Ca. 260. Order of removal of John Cotton, &c., from St. Margaret's, in King's Lynn, to Wolferton, quashed. Case:—Headley, a shoemaker, a friend of the pauper's mother's family, applied to her, and offered, if she would agree to his proposal, that he would take her son, then a boy, to learn his business; but there were no indentures, on account of her poverty. The pauper was to serve for four years, to board and lodge with his mother in St. Margaret's, and to have half what he earned. The pauper entered upon this service, worked in the shop with the apprentices, did not stay with his master on a Sunday, and was not required to do any work but in the shop. The pauper continued in the service four years, boarding and lodging in St. Margaret's. Some time after entering upon the service, Headley sent the following writing by the pauper to his mother, which was neither stamped nor signed:—"An agreement drawn up between Mrs. Cotton and Thomas Headley, that the said Thomas Headley is to find her son, John Cotton, work for four years, and he is to have half what he earns all the four years; and Mrs. Cotton is to find her son, John Cotton, every thing else during the four years." *Bayley*, J. "I am of opinion that this was a defective contract of apprenticeship, and not a contract of hiring. Every case of this nature must be determined with reference to its own peculiar circumstances. Where it appears from all the circumstances that the parties at the time of making the contract contemplated the relation of master and apprentice, the contract must be construed as one of apprenticeship; and then if it is a defective apprenticeship, no settlement can be gained by service under it. Where, on the other hand, it appears that the parties contemplated the relation of master and servant, the contract must be construed as one of hiring, and a settlement will be gained by service under it. The payment of a premium is strong evidence to show that an apprenticeship was intended; but it is not decisive: and still less is the absence of a premium evidence to show that a contract of hiring was intended. The written agreement, not having been signed or stamped, must be laid out of consideration, and we must look to the original bargain between the master and the pauper's mother, to ascertain the intention of the parties. The proposal, and consequently the purpose of the master, was to teach the pauper his trade; and the pauper was to serve four years for that purpose, to have half what he earned, and to board and lodge with his mother. In ordinary cases, inden-

tures of apprenticeship are executed, but here they were not executed on account of the poverty of the mother. The fact that the execution of indentures was thought of, though not realized, shows clearly that the parties did not contemplate the mere relation of master and servant, but did contemplate the relation of master and apprentice. *Rex v. Little Bolton* comes very near the present. There the pauper proposed to the master, who was a weaver, to teach him to work counterpanes; but although the object of the pauper was to be taught a trade, the master agreed to teach him only upon the condition that he should work for a given time. In many cases the object of the party who hires himself is to learn a particular trade, and the instruction which he receives is a partial remuneration for his services. In *Rex v. Burbach*, ante, 396, it was agreed that the pauper should work for two years, and have what he got, allowing his master so much per week for teaching him. The court held that to be a contract of hiring and service, but there was nothing to show that the parties ever contemplated the relation of master and apprentice. Here a contract of apprenticeship was contemplated, and not completed, only in consequence of the poverty of the pauper's mother. That being so, I think this a defective contract of apprenticeship." *Holroyd, J.* "I am of opinion that the relation of master and apprentice was contemplated; or, at least, that there is not evidence to justify us in saying that the relation of master and servant was contemplated. The case states that the master, a shoemaker, applied to the pauper's mother, and offered her, if she would agree to his proposal, to take her son, then a boy, to learn his business. The proposal was to teach, and the mother was to consider whether she would accept that proposal. The terms upon which the master proposed to teach the pauper was, that the pauper should serve four years. Now, for what purpose was he to serve four years? To learn the business. I think the sessions were not warranted in finding that the relation of master and servant existed in this case. The fact of the pauper having served, does not warrant the conclusion that he served in the character of servant, and not of apprentice; for mere service does not constitute the relation of master and servant." *Littledale, J.* concurred. Order of sessions quashed.

9. OF PARISH APPRENTICES. (a)

9. *Of Parish
Apprentices.*

There are some peculiarities respecting parish apprenticeships, which render it expedient to consider them separately.

The authority of the churchwardens and overseers to bind out poor children is derived from the 43 Eliz. c. 2, s. 5 (ante, 452); but various regulations have been established by subsequent statutes, among which is a provision that it shall not be lawful for any parish officers to bind out any child as a parish apprentice until such child have attained the age of nine years. 56 Geo. III. c. 139, s. 7 (ante, 477); and see the several enactments (ante, 451, 452). See construction of 56 Geo. III. c. 139, s. 11; *Rex v. St. Peter, Hereford*, 1 B. & Adol. 916 (post, 525).

By the 43 Eliz. c. 2, s. 5 (ante, 452), a parish apprentice could be bound only by the greater part of the churchwardens and overseers; and therefore where one of the two overseers was also sole churchwarden, and the indenture was executed by the overseers, the binding was held insufficient, as there ought to be two overseers exclusive of churchwardens (*Rex v. All Saints, Derby*, 13 East, 143); but this was remedied by 51 Geo. III. c. 80 (ante, 472), which has a retrospective operation.

Rex v. St. Margaret's, Leicester, 2 B. & Ald. 200. Removal from St. Margaret's, Leicester, to Foxton. Order quashed. Case:—Barker, the husband of the pauper, was bound apprentice by a parish indenture, dated 30th April, 1791, to Warburton, of Great Wigston. The indenture witnessed, that Chapman and Iliffe, churchwardens of Foxton, and Chapman and Coleman, overseers, do put Barker, apprentice, &c. It was duly allowed, but executed by Chapman and Coleman only. The pauper's husband served a

51 Geo. 3, c. 80, extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer.

(a) See division of the subject, ante, 451.

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sufficient time under it to gain a settlement in Wigston, if the indenture were valid. It was admitted that Chapman and Iliffe were the two churchwardens at the time when Chapman and Coleman were appointed overseers, and that these persons were the officers of the parish in the year comprehending the day on which the indenture was executed. The question was, whether the indenture was valid or not? *Abbott, C. J.* "This act of parliament was a remedial act, and ought therefore to receive a liberal construction; and I do not think, that in holding that this case is within it, we put any forced construction upon its provisions. This case is clearly within the mischief of the act, and I think within the fair meaning of the words by which it is remedied. I am therefore of opinion, that the 51 Geo. III. c. 80, extends not only to cases where *both* the parish officers *act in a double capacity*, but to those also where only one of them is in that situation. The decision of the sessions was therefore right." *Bayley, J.* "This act was passed almost immediately after the determination in *Rex v. All Saints, Derby*; there only one of the officers acted in a double capacity. It was to remedy the inconveniences resulting from that decision that the act was passed. I think it is not a forced construction of it (when it is admitted that its provisions include the case of a double defect), to hold that they also extend to a case of a defect in one parish officer only." Order of sessions confirmed.

Rex v. Hinckley, 12 East, 361. Where an indenture appeared to be executed by W. S. churchwarden, and J. G. overseer of the hamlet of Atterton, and no other evidence was given respecting it, it was holden by the sessions to be sufficient; but the Court of King's Bench held that there might be one churchwarden only by custom, and that if any intendment could by law be made to support the indenture, they must make that intendment.

Upon this case *Mr. Evans*, in his collection of statutes, observes, "I have never been able to assent to the correctness of this decision, because the presumption is always to be made according to the general course and operation of the law; and if the appointment of one churchwarden would be *prima facie* void, the existence of a special custom to support it would seem to require positive proof. But see *Rex v. Whitchurch (post)*; *Rex v. Upton Grey (post)*."

Rex v. Nantwich, 16 East, 228. Order of removal from Pendleton to Nantwich. Order confirmed. Case:—The parish of Nantwich consists of five townships, of which the township of Nantwich is one. These townships act separately in all matters relative to the management of the poor, and separate overseers are regularly appointed, two for each township. Two churchwardens are appointed for the parish at large, who have not been accustomed to interfere at all in the management of the poor in either of the townships. There are no churchwardens appointed in any of the townships. In 1787 the pauper, then being a poor boy, and settled in the township of Nantwich, was put out for seven years as an apprentice to W. and T. D. cotton machine workers, by an indenture duly stamped and executed by the overseers of the township of Nantwich, and duly allowed by two magistrates, *but not executed by either of the churchwardens*. Under this indenture the pauper served Messrs. D. for seven years at Pendleton, and resided there during the whole time. The question was, whether it was necessary that the churchwardens of the parish should execute this indenture? The arguments were upon the construction to be given to 43 Eliz. c. 2; 13 & 14 Car. II. c. 12; 8 & 9 Will. III. c. 30; and 17 Geo. II. c. 38, s. 15; and the cases of *Rex v. Clifton (2 East, 168)*; and *Spitalfields v. Bromley (2 Bott, 684)*, were cited. The court delivered their opinions at great length, and entered very fully into the meaning of these several acts of parliament, as connected with each other. Lord *Ellenborough* said, "I take it to be clear that the churchwardens do not act as an integral part, but that a majority of the conjoint body would be sufficient; or if there were four overseers and two churchwardens, an indenture executed by all the overseers, without the churchwardens, would be valid;" and it was the opinion of the court, that by the operation of the stat. 13 & 14 Car. II. c. 12, an indenture of apprenticeship executed by the overseers of a township which has no churchwardens

Indenture signed by one churchwarden and one overseer is sufficient.

Since the 13 & 14 Car. 2, c. 12 (*ante*, 452), an indenture, executed by the overseers of a township which has no churchwardens, and maintains its own poor, is valid, although neither of the churchwardens of the parish join in the execution.

and maintains its own poor separately, is a valid indenture, though neither of the churchwardens of the parish join in the execution; and that when overseers are appointed under 13 & 14 Car. II. they alone constitute overseers for the township; the township is to be considered as not having churchwardens; and that the words "where no churchwardens," in the certificate act, mean where there are no such churchwardens as, with the overseers, constitute the officers of that place. (See 54 Geo. III. c. 107, s. 2, *ante*, 473.)

The 43 Eliz. c. 2, does not require absolutely two churchwardens in every parish for the management of the poor; and therefore an indenture binding out a poor apprentice by *one* churchwarden (where by custom there was but one) and *one* overseer, was held to be good. (*Rex v. Earl Shilton*, 1 B. & Ald. 275, reported more fully in Vol. I.)

Rex v. Quainton, 2 M. & Sel. 338. Removal from Quainton to Bicester-Market-End quashed. Case:—The pauper, on the 23d of November, 1811, a poor boy aged thirteen, of Quainton, was, with the consent of the trustees (created by the will of Lady Say and Sele for the purpose of yearly putting out a certain number of poor boys apprentices), bound apprentice to J. Adams, of Bicester, for seven years, for the consideration of 20*l.* stated in the indenture to be paid to Adams by the trustees, who were recited to be parties to the indenture; but it was only executed by the pauper and Adams. This indenture was unstamped, and it appeared that Adams received only 16*l.* 15*s.* 6*d.*, the residue of the 20*l.* being retained by the agent of the trustees for the expenses of the binding. The pauper served under the indenture at Bicester more than forty days. It was first urged that the "two sums" was the gross sum received; and next, as the trustees had not joined in the execution of the indenture, this was not a placing out at the expense of a charity, but was similar to parish indentures, to which the officers must be parties. Lord *Ellenborough*, C. J. said "Upon the latter point it appeared that the money was paid out of the funds of the public charity, and that it was paid by the trustees in the execution of their trust; and that they acted very wisely not to involve themselves by becoming parties to the covenant; and as to the other point, that the consideration was fully stated. Even if a stamp had been necessary, the consideration would have been sufficiently stated, for it is stated against the party's interest." (See *Rex v. Keynsham*.) Order of sessions quashed. As to guardian not executing, see *ante*, 493, (*Rex v. Lutterworth*, 3 B. & C. 487; 5 D. & R. 343.)

Rex v. Saltern, *Cald.* 443. The assent of the justices must be given by their signing.

Rex v. Hamstall Ridware, 3 T. R. 380. The pauper was bound a parish apprentice. The indenture was *separately* assented to by two justices, by signing the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. It was contended that this was a *ministerial act*, and like the allowance of a rate. But Lord *Kenyon*, C. J. held clearly that *this was* an act of a *judicial nature*, and as such that the justices must, when they do it, meet and confer together.

Rex v. Winwick, 8 T. R. 455; 1 Bott, 625. By an indenture dated 18th December, 1789, the pauper was bound an apprentice by the parish officers of Winwick to T. H. of Spratton. It was signed by Dr. Freeman, one of the justices, at the parish where he resided; but the other justice, Dr. Preedy, was not then present. A few days afterwards Dr. Freeman went to the house of Dr. Preedy, where the same was signed by Dr. Preedy, in the presence of all the parties. Lord *Kenyon*, C. J. "This case is clearly distinguishable from *Rex v. Hamstall Ridware*, *supra*, because though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure, when the other magistrate also executed the instrument. The principle on which this case is determined was recognized some years ago in a case of murder; a magistrate who kept by him a number of blank warrants ready signed, on being applied to, filled up one of those, and signed and delivered it to the officer, who on endeavouring to arrest the

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Indenture reciting certain trustees to be parties, and the consideration to be 20*l.*: Held good, though not executed by the trustees, and though only 16*l.* 15*s.* 6*d.* of the consideration was paid to the master.

An indenture of a parish apprentice, assented to by two justices separately, is void, and gives no settlement by serving under it.

One justice may sign alone if he be present when the other signs.

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The binding of a parish apprentice under 56 Geo. 3, c. 139, s. 2, into another county, the indenture must be allowed by four *distinct* justices, two of one county and two of the other.

Two justices refused to bind a parish apprentice, and he was bound with his own and his mother's consent out of the parish money. The sessions found the binding fraudulent: the Court of King's Bench held the binding independent of the statute, and a settlement gained.

party, was killed; the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not on a new principle then for the first time established; it had always been uniformly acted upon."

The King v. Shipton, 8 B. & C. 772. The statute 56 Geo. III. c. 139, s. 2, enacts, that in all cases where the residence or establishment of business of the person to whom any child shall be bound, shall be within a different county from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound shall be allowed, as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve: Held, that in such case the indenture must be allowed by four distinct persons, two of them being justices of the county from which the apprentice is to be bound; and the other two being justices of the county into which he is to be bound.

Rex v. Kilby, 2 M. & Sel. 501. Removal from Kilby to Great Wigston. Order discharged. When the pauper was four or five years old, the parish officers wished to put him out apprentice, but the mother, a widow, objected on account of his age. In consequence of her objecting, the officers refused to give her any more relief. When the pauper was about eleven years old, the widow being no longer able to support him, went to the parish officer and told him she would consent that her son should be put apprentice. He bid her choose a master, and she chose Dand, of Great Wigston, to whom the parish officer agreed to give three guineas in money, and other things to the amount in the whole of 4*l*. The parish officer, the pauper, his mother, and Dand met together, proposing to have the boy bound before the justices, and went before them for that purpose, but the justices finding that Dand had as many apprentices as they thought he could do justice to, would not let him have any more. The parish officer then declared, if he could not have him bound there, he would have him bound in another place, and accordingly took all the parties to an inn, procured an indenture stamp, which was regularly filled up and executed, and the pauper, with the consent of his mother, bound himself to Dand for seven years. (a) The premium, three guineas, and the other things making up the 4*l*., were to be delivered to Dand at the expiration of six weeks from the execution of the indenture, at which time Dand went to Kilby, and received them of the parish officer. The duty paid was 1*s*. 6*d*., being 6*d*. in the pound upon the 3*l*., and all expenses of binding were paid by the parish. The sessions found fraud. Lord Ellenborough, C. J. said "This does not appear to have been intended to be a binding as a parish apprentice; if it did it might be defective. But it is, independent of the statute, a binding with the consent of the mother, the son, and the master. The justices have indeed found fraud, but there are no circumstances to warrant such a conclusion, except that when the parties could not obtain the binding before the justices, they went elsewhere and perfected it in another way. It is said this was the parish money, and perhaps there has been a misapplication of it; but still there has been a valid binding, for the pauper, with his mother's consent, binds himself. If the mother had been a party to the indenture, and the action had been brought against her upon it, I do not see how she could have effectually pleaded *per fraudum* or *per minas*." *Le Blanc*, J. "It appears that the mother chose the master, and it is not stated that the child was of an age not fit to be bound apprentice." *Bayley*, J. "After the allowance was withdrawn, the

(a) By 56 Geo. III. c. 139, s. 11 by the public parochial funds, must be (ante, 478), such an indenture, by reason allowed under the hand and seal of two of which any expense shall be incurred justices.

mother might have obtained relief by application to the justices, if she had been entitled to it." Order of sessions quashed. (See *Rex v. Arundel* (*ante*, 485), where the master not belonging to the parish, it was not considered a parish binding, though premium paid by overseers.)

Rex v. St. Paul's, Exeter, 10 B. & C. 12; 5 M. & R. 94. Order of removal of Jane Bishop from St. Paul's, Exeter, to Tedburn, St. Mary; quashed. Case:—The pauper, in 1818, was bound apprentice, by the parish officers of St. Mary, to H. B. The indenture was made in pursuance of a previous order of two justices, to which reference was made by its date, and was duly executed by the parish officers and by the master. An allowance of the same was written at the foot thereof, which was signed by two justices, but was not under seal. On occasion of this binding, an expense of 17s. was incurred by the public parochial funds of the parish of St. Mary; viz., 7s. as the costs of preparing the indenture, and 10s. were given to the master with the pauper. The pauper resided in St. Mary under this indenture for four years. On a subsequent day, *Bayley, J.* "On carefully considering the 56 Geo. III. c. 139 (and after conferring with Lord Tenterden, who concurs in the judgment I am about to pronounce), we are of opinion that the first ten sections apply to cases where the parish officers are parties to the indenture, and the 11th sect. to cases where the parish officers do not join in the indenture, but where some part of the expense attending the indenture is defrayed out of the public parochial funds. That this is the meaning of the 11th sect. appears to us to be manifest, from the use of the word 'clandestinely' in that section. The mischief recited in the preamble of that section is that the premium was clandestinely provided by the parish officers, &c. The first ten sections, which evidently apply to bindings by the parish officers, require that the indenture should be approved by two justices under their *hands* only. Now parish officers cannot be said to provide the premium *clandestinely* when they join in the indenture. The 11th section, therefore, can apply to those cases only where they are not parties to the indenture, but where they provide some portion of the premium. The indenture in this case was one (the parish officers being parties to it) contemplated by the first ten sections. The allowance was signed, though not sealed, by the justices. It is therefore a valid indenture." Order of sessions quashed.

Rex v. Mattishall, 8 B. & C. 733; 3 M. & R. 386. Case:—The pauper was bound by indenture for three years. The deed was signed by the master, attested by the parish officers, but not approved by two justices. Before it was executed, the master said the pauper should have some better clothes; and thereupon the pauper applied to the parish officers, who agreed to give the master 2*l.* at the execution of the indenture to buy clothes, and 2*l.* more for the same purpose at the end of a year. The first 2*l.* was paid to the mistress, and the other 2*l.* to the pauper. *Bayley, J.* "The enacting part of the 11th sect. of 56 Geo. III. c. 139, goes beyond the recital. If it had not, I could not have said that the money was paid as a premium. It has been said that it does not appear that the money was paid out of the parish funds. If that was not so, it might have been easily proved. The sessions have found that it was paid by the parish officers; that *prima facie* implies that it was paid by them out of funds belonging to them in that character. We may assume, therefore, that the sessions had premises wherefrom to find that the money was contributed by the parish officers, not out of their private but out of the parish funds. Then we must look to the 11th sect. [which he read]. Here the money was paid, because the master objected to take the apprentice unless he had clothes. It was therefore an expense incurred by the parish, within the very words of the statute. The indenture then, not having been approved by two justices, is void, and no settlement is gained by service under it." *Littledale, J.* concurred. *Parke, J.* "It is perfectly clear that the money advanced to the pauper was an expense incurred by the public parochial funds within the enactment, though it is not a premium within the recital; I think also it is within the mischief contemplated. By 43 Eliz. c. 2, the assent of two justices was required, where the binding was by the

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An indenture of apprenticeship, to which the parish officers are parties, requires that the allowance should be signed, but not sealed, by the justices.

Justices must allow the indenture, where any expense is incurred by the parish.

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An indenture, by which a person of twenty-one years of age binds himself an apprentice, does not require the approval or allowance of justices where the premium is paid out of the public parochial funds, under 56 Geo. 3, c. 139, s. 11.

parish officers. But if they secretly advanced the whole or part of the premium (provided they were not the binding parties), the assent was unnecessary. This was the mischief to be remedied. The statute requires the assent in all cases, where the parish officers interfere in the binding out of children, by advancing money for that purpose."

Rex v. St. John, Bedwardine, 2 Nev. & Man. 86; 5 Bar. & Adol. 169. An appeal against an order of removal, whereby Robert Hinton was removed from St. John, Bedwardine, to Hanbury. Order quashed. Case:—The pauper, before he was twenty-one years of age, gained a settlement in Hanbury, the appellant parish, by a hiring and service for a year with J. Stain; after the pauper became of age, being lame, he applied for relief to the overseers of the appellant parish, who recommended him to learn some trade, but refused to bind him out; nevertheless they promised that if he could find a master, they would give 4*l*. The pauper then put himself apprentice to one Hatch, living in the respondent parish. The parish officers of Hanbury gave the money to the pauper, who paid it to Hatch. The indenture was by deed, sealed by the master and the apprentice. Whilst under this indenture the pauper slept more than forty nights in the respondent parish, and is settled there, if the indenture be good in law. The question for the consideration of the court is, whether a person apprenticed under the circumstances stated in the case, and after he is twenty-one years of age, is a poor child within the meaning of the 56 Geo. III. c. 139, s. 11. *Denman*, C. J. "It is impossible to say that a person of full age is a poor child within the meaning of the act in question. Although parties may be bound so as to continue apprentices until they are twenty-four years of age, it does not follow that a person of the age of twenty-one may by virtue of this act be bound apprentice. The argument would go to this, that poor persons of seventy years of age might be bound out apprentices. With regard to the 11th section, it is said that no indenture of apprenticeship is valid, where any expense whatever has been incurred by the parish, unless approved of by two justices of the peace, under their hands and seals. Though the enacting words of that section are large, they do not appear to me to extend to this case. The introductory part of the section states what are the mischiefs the legislature intended to remedy. The words of the enacting part of the section ought to have an effect limited to the mischief mentioned in the recital. Besides, the enacting part says that the indenture must be assented to by the justices, according to the provisions of this act, and the act extends to poor infant children only. Nor do I think that the case of *Rex v. St. Paul's, Exeter*, ante, 521, extends the construction of this act any further." *Littledale*, J. concurred. *Parke*, J. "It is very clear that the apprentice in this case is not a poor child within the meaning of the act of 56 Geo. III. It appears to me that by the 11th section the legislature contemplated a person under the age of twenty-one years. The first ten sections of the statute clearly relate only to children in the ordinary sense of the term—persons under the age of twenty-one years. In the 11th section the mischief intended to be remedied is in the first place recited, then come the words, 'no indenture of apprenticeship shall be valid, by reason of which any expense whatever shall at any time be incurred by the public parochial funds.' But these words must be controlled by the precedent recital. Then these words follow: 'Unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act.' Looking at the former act and at this act, it is clear that they provide only for the apprenticing of poor children under the age of twenty-one years." *Patteson*, J. concurred. Order of sessions confirmed.

Lands were devised for the relief of the poor of H., one half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices. The

Rex v. Halesworth, 3 Bar. & Adol. 717. On appeal against an order for the removal of John Carter, his wife and child, from St. Michael at Thorn to Halesworth, the sessions confirmed the order, subject to the opinion of this court upon the following case:—A *prima facie* settlement in Halesworth was admitted, but the appellants relied upon a subsequent settlement by apprenticeship in St. Michael. It appeared that in 1652 John Keble devised certain lands in Holton for the relief of the poor of Halesworth, half the revenue to be employed for the relief of widows, and the other half towards

binding out apprentices. The rents of these lands were received by the churchwardens of Halesworth, and were kept in a distinct account, and not mixed with the monies arising from the poor's rates. The father of the pauper, who was a settled inhabitant of Halesworth, but residing at Norwich, and not at that time receiving parish relief, being unable from poverty to bind out his son, and having heard of Keble's charity, applied to the churchwardens of Halesworth to provide him with the means of putting his son apprentice. They agreed to do so, and by indenture of apprenticeship duly stamped, the pauper, with the consent of his father, bound himself apprentice to George Hall of Norwich for seven years, at a premium of 10*l.*, which was stated in the indenture to have been paid by the churchwardens of Halesworth. The premium, the costs of the indenture, and the expenses of providing the pauper with proper clothes, were paid by the churchwardens out of the monies of Keble's charity. The indenture was executed by the pauper, his father, and Hall; and the pauper served under it more than forty days in the respondent parish, but none of the directions contained in any section of 56 Geo. III. c. 139, had been complied with, either in the binding of the apprentice or the form or execution of the indenture. The court of quarter sessions were of opinion that Keble's charity must be considered as a public parochial fund, and that the indenture not having been duly approved of under the 11th section of the 56 Geo. III. c. 139, the pauper gained no settlement by serving under it. After hearing counsel on this case, the court then desired to hear the other case argued before giving judgment in this. The appeal in this case was against an order for the removal of William Clarke from Halesworth to Laxfield in Suffolk. The settlement relied upon by the appellants was by apprenticeship under the following circumstances. John Smith, in 1718, devised to the churchwardens and overseers of the poor of the parish of Laxfield, and to their successors for the time being for ever, certain freehold lands in that parish, upon trust that they should apply the rents for a certain period towards erecting a school-house in the said parish, and afterwards towards the payment of a schoolmaster, and towards the teaching and educating twenty poor boys of the said parish in reading, writing, and accounts, to be chosen and approved of by the churchwardens, overseers, and principal inhabitants for the time being; and further, that 40*l.* of the said rents should be by the said churchwardens and overseers yearly applied towards the putting out to apprentice eight of such twenty poor children to some good handicraft trade, to be computed at 5*l.* per head; and the said eight children to be chosen out and allowed likewise by the churchwardens and overseers and principal inhabitants of the said parish. By indenture of apprenticeship, dated 27th March, 1826, the pauper voluntarily bound himself, with the approbation and consent of his father and the churchwardens of Laxfield, to Henry Tillney, of Halesworth, for three years. The consideration to the master was stated to be 15*l.* 15*s.*, gift of John Smith, of Laxfield, gentleman, deceased, one half to be paid by the churchwardens, or one of them, on the 9th of May next ensuing, the remainder on the 11th of October, 1827; and the churchwardens, one of whom executed the indenture, covenanted to pay him the same accordingly. The indenture was not stamped. The pauper served his time under it in Halesworth. He had been educated at Smith's school, and the premium and costs of the indenture were paid to the master out of the monies received by the parish officers as trustees under Smith's will. None of the directions of 56 Geo. III. c. 139, were complied with, either in the binding or in the form and execution of the indenture: it appeared that the parish accounts for Laxfield and the trust accounts were kept distinct, and the court of quarter sessions found that the charity was a public charity. The order was quashed, subject to the opinion of this court upon the case. Lord *Tenterden*, C. J. "There is some difference in the facts of the two cases, but it will be best to decide both on general principles. In one sense, according to some decisions, the funds in both these cases are funds of public charities, because the bequest is general, and does not designate the individuals to be benefited. In another sense they are parochial

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rents were received by the churchwardens, and not mixed with the poor rates, but kept in a distinct account. A parishioner of H., not receiving parish relief, applied to the churchwardens to provide him with means of apprenticing his son. The son was apprenticed, and the churchwardens paid the premium, costs of indenture, &c. out of the charity fund: Held, that this was not an indenture by which an expense was incurred by public parochial funds within 56 Geo. 3, c. 139, s. 11, and therefore not void for want of the approval of two justices according to the statute. And in a similar case, where lands were devised to the churchwardens and overseers of H. and their successors, upon trust to apply the rents towards educating twenty poor children, and a part thereof yearly towards apprenticing eight of such children, to be chosen out and allowed by the said churchwardens and overseers, and the principal inhabitants: Held, that this also was not a public parochial fund within the meaning of the act.

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also, because they are left for the benefit of persons belonging to the respective parishes. Still the question is in each case, whether the money be that of a 'public parochial fund' within the meaning of the statute 56 Geo. III. c. 13, s. 11. The mischief recited by that section is, that the provisions of the statute 43 Eliz. c. 2, are evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace. It is therefore enacted that no indenture, by reason of which any expense shall be incurred by the public parochial funds, shall be valid, unless approved of by two justices, according to the provisions of this act and the statute of Elizabeth. I think the present case is not within the mischief there contemplated. There is no clandestine appropriation of monies of the parish. The funds in question cannot properly be so called in respect of the purpose for which they are collected, or the manner in which they are raised, since they are not contributed by the inhabitants of the parish. I think a public parochial fund must be one so contributed, or which is applicable to the general purpose of the relief of the poor. Estates devised for the relief of the poor generally would come under this description, but in each of these cases there is a fund left by the bounty of an individual for a certain specified purpose; that is, for the benefit of a particular class of persons. It is not meant to go in relief of the general parish fund, or, if so, only to a moderate extent. It does not appear that the intention was to relieve persons actually burdensome to the parish: there might be persons unable to bind out their own children, and therefore objects of this charity, who yet did not require parochial support; and in such cases the fund would be no relief to the parish. It appears to me also that the donors in these cases never intended the objects of their bounty to be under the control of the justices of peace, but that the charity should be in the one case at the disposal of the churchwardens, in the other (as respects apprentices) at that of the parish officers and principal inhabitants. I am therefore of opinion that these are not public parochial funds within the 11th section of 56 Geo. III. c. 139, and that the order of sessions in the first case must be quashed, and that in the second confirmed." *Littledale, J.* "I am of the same opinion; I think the term 'public parochial funds' does not apply where particular individuals or a particular class are pointed out as the objects of their application. The 11th section of the act 56 Geo. III. c. 139, was intended to prevent the clandestine appropriation of parish money by the officers of the parish, in evasion of the statute of Elizabeth; it is an enactment for the general regulation of parish funds, not for that of particular charities. And I also think it was not contemplated in these charities that the application of the monies should be interfered with by justices of the peace." *Parke, J.* "The words 'public parochial funds' in the 11th section do not mean the poor-rate merely, or else that probably would have been the term used. Other receipts applicable to the relief of the poor, as penalties or funds expressly given in aid of the poor-rate, may also be included. But the denomination of 'public parochial funds' certainly cannot be applied to lands given for such a special and limited purpose as is pointed out in these cases. One material consideration is, that if this construction were to prevail, it would defeat the intentions of the testators, who did not mean to give the justices a power of overruling the discretion of the parish officers in one case, or of the parish officers and principal inhabitants in the other. And it has been very well pointed out in argument that these are not cases within the mischief of the act 56 Geo. III. c. 139." *Taunton, J.* "This is a question of very great importance, for if revenues like these were held to be public parochial funds, it would be of serious consequence to many excellent institutions established for the purpose of bringing up and apprenticing the children of the poor. Such establishments might be entirely perverted from their proper ends if the children placed out by them were to be considered parish apprentices. But it is not necessary to proceed on grounds of public policy, because, on the strict technical legal application of 56 Geo. III. c. 139, s. 11, it is clear that such a construction cannot prevail. That

section speaks of indentures by reason of which expense is incurred by the public parochial funds, and certainly those in question are in one sense public and in another parochial; but on looking to the preamble as well as the enacting part of this section, it is clear that the legislature did not mean every fund, which in some sense was public or parochial. They contemplated such funds as before the passing of the statute were applicable to the binding out of poor children according to the directions of the statute of Elizabeth; but if the churchwardens in one of these cases, and the parish officers and principal inhabitants in the other, had applied these monies to the general purposes of the statute of Elizabeth, it is clear they would have misapplied them. There is great force in the observation made by Mr. Andrews, that if it had become necessary the Court of Chancery would, on application, have appointed trustees for the management of this charity, and in that case it could not have been said that these monies came under the denomination in the statute of 'public parochial funds.' Now although that has not been done, the trusts and objects of the devise in each of these cases are still the same, and the churchwardens and overseers are trustees of the same description as private persons would be if appointed by the Court of Chancery. I am therefore of opinion that the proceeds of these charities, though in some sense public funds, must yet, with reference to the enactment in 56 Geo. III. c. 139, s. 11, be considered private." Order of sessions in the first case quashed, that in the second confirmed.

Rex v. Quainton, 1 *Adol. & Ellis*, 133; 3 *Nev. & Man.* 289, S.C. Upon an appeal against an order, whereby James Friday Carter and his wife and child were removed from St. James's Clerkenwell to Quainton, the court of quarter sessions confirmed the order, subject to the opinion of the court on the following case:—21st October, 1820. By indenture of this date the pauper J. F. Carter, being a poor boy and a settled inhabitant of Quainton, was, by the trustees of a charity established under the will of the late dowager Lady Say and Sele, for placing out poor boys of Swanbourne apprentices, bound as an apprentice with a premium of 20*l.* to Thomas Carter of Swanbourne, Bucks, butcher, for seven years. He served as an apprentice under that indenture so as to gain a settlement in Swanbourne, if the indenture was valid. The whole of the premium was paid out of the charity fund, and no other premium or consideration was paid to the master from any other source. The costs of the indenture were paid by the master out of the premium; but on the 20th October, 1820, the day before the binding, the pauper was provided with a full new suit of clothes by the parish officers of Quainton, which were paid for out of the public parochial funds by one of the churchwardens to the tradesmen from whom the different articles were purchased, which would not have been given to the pauper at that time but in prospect of his being so bound apprentice, though no stipulation to that effect was made by or with the master. The indenture of apprenticeship had not the sanction or signature of any justices of the peace. By 56 Geo. III. c. 139, s. 11, after reciting that the salutary provisions of 43 Eliz. c. 5, were frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, was clandestinely provided by parish officers, who were thus enabled to bind out such poor children without the sanction of justices of the peace, it was enacted, "that no indenture of apprenticeship, by reason of which any expense whatever should at any time be incurred by the public parochial funds, should be valid and effectual, unless approved of by two justices of the peace under their hands and seals, according to the provisions of the former act and of that act:" If, therefore, the Court of King's Bench shall be of opinion that there is in this transaction such an incurring of expense by the public parochial funds as was contemplated by the statute, the order of sessions to be confirmed, if otherwise, to be quashed. The court, without calling upon Adolphus, who was to have argued the case against the order of sessions, quashed the order.

Rex v. St. Peter's, Hereford, 1 *Bar. & Ad.* 916. On appeal against an order of two justices, whereby Charlotte Stephens, single woman, was removed from Kingston to St. Peter's, Hereford, the sessions confirmed the order, subject

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Trustees of a charity bound out the pauper and paid the premium. The parish officers gave him clothes, all of which he would not have had at that time except on the occasion of his being bound out; and no stipulation on the subject was made by or with the master: Held, that the supply of clothes was not an expense incurred by the parish within 56 Geo. 3, c. 139, and consequently that the indenture did not require the approval of two justices.

Sect. 11 of 56 Geo. 3, c. 139, applies only where the binding of a

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pauper apprentice is directly or indirectly procured by the parish officers. Therefore, where a poor person was bound out by money collected in charity by individuals, and amongst others from the overseers of three parishes, it not appearing that her settlement was in either; it was held not to be a case within the statute requiring the assent of two justices. How enacting words of statute to be construed.

to the opinion of this court on the following case:—The pauper, Charlotte Stephens, was in Hereford gaol, and was tried for felony at the August assizes, 1825. At the recommendation of the judge who tried her, Dr. Lye, the mayor of Hereford, undertook to collect a sufficient sum of money to apprentice her. Dr. Lye, conceiving from something the pauper said, that Kingston was her place of settlement, wrote to Mr. Wall, the vicar of that parish. Mr. Wall wrote in answer, that Kingston would not admit that the pauper was a parishioner there; but he sent Dr. Lye 4*l.* Dr. Lye received 5*l.* from Lord Somers, and 1*l.* each from the parishes of St. John Baptist, All Saints, and St. Nicholas, in the city of Hereford, and other sums from other persons, making in the whole 14*l.*; and he agreed to give one Thomas Trotman, with whom the pauper was placed as apprentice, a premium of 10*l.* and to pay him 4*l.* more to furnish her with clothes, and as a recompence for his having supported her some time before she was bound. Dr. Lye advanced the whole 14*l.* for those purposes in September, 1825, and received no part of the subscription till 1826, and upon the whole was at an expense of 3*l.* more than the money collected by him. The monies contributed by the three parishes in Hereford were paid by the acting overseers, and allowed them in their accounts. The indenture of apprenticeship was not produced; but it was proved by the attorney who prepared it, and by his clerk who attested it, that on the 13th of September, 1825, an indenture of apprenticeship was filled up, binding C. Stephens, the pauper, to Trotman, on a 1*l.* stamp, and was witnessed by the clerk, but they did not go before any magistrate. The premium of 10*l.* was paid, and the pauper served under the indenture nearly three years, residing in the appellant parish. It was admitted by the parties that the 4*l.* remitted by Mr. Wall had been received by him from Samuel Wright of Kingston, and a magistrate residing near that place stated that he believed Samuel Wright was overseer of Kingston in 1825, but he could not speak to a certainty, the parish having been under a select vestry. It was contended on behalf of the appellant parish, that the indenture was void for want of the consent of two magistrates, part of the premium having been paid out of the parochial funds; but the court confirmed the order, considering that the indenture was not binding by any overseer or overseers, but by Dr. Lye, who was not overseer of either of the parishes. The court also considered that the payments by the several parishes were voluntary, and not made under any legal obligation; and though they were charged to the parish accounts yet no evidence being produced that the pauper belonged to either parish, there was no occasion to have the consent of magistrates, under the 56 Geo. III. c. 139, to the binding. The question for the opinion of the court was, whether or not the indenture was valid without the consent of magistrates; if it was not so, the pauper was improperly removed to the parish of St. Peter. Lord Tenterden, C. J. "This is a case not within the mischief intended to be remedied by the statute. The only question is, whether the enacting words of the eleventh section should not be construed with some restriction. That this binding is not within the general mischief intended to be remedied by the statute appears manifestly from the preamble, which recites, 'that many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons and to persons residing at a distance.' This was not a binding by parish officers, but by an individual. The statute then directs, that 'before any child be bound apprentice by the overseers of the poor of any parish, &c. such child shall be carried before two justices, who shall inquire into the propriety of binding such child,' &c. The first ten sections apply to cases where the parish officers are the binding parties; but inasmuch as parish officers intending to bind a child apprentice to an improper person, or to a person not residing or carrying on business within a reasonable distance, might, without being actual parties to the indenture, in order to evade the provisions contained in those sections, advance the public parochial fund to the parents of such child, in order to bind him out; to remedy that mischief and to prevent the parish officers from doing indirectly that which the other sections prevented them from doing directly, the eleventh section was introduced. That section recites, that 'the salutary provisions

enacted by the 43rd of Elizabeth are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace.' The mischief therefore was, that parish officers, by advancing money, without becoming ostensible parties to the indenture, were enabled to bind out poor children without the proper sanction; and to remedy that mischief it is enacted, that 'no indenture of apprenticeship, by reason of which any expense whatever shall be at any time incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace under their hands and seals, according to the provisions of the said act and of this act.' The enacting words are certainly very large, but I think we ought to put on them such a construction as may have the effect of preventing the mischief intended to be remedied, yet of not extending them to a case like the present, where a humane and charitable person has bound out a poor apprentice, part of the sum expended in such binding having been voluntarily contributed by parish officers, and afterwards allowed them in their accounts by the parishes for which they act. I think we must construe the enacting part of this statute as applying to cases where the execution of the indenture is directly or indirectly obtained by parish officers, so as in effect to be a binding by them. Here the binding was not procured either directly or indirectly by the parish officers." *Littledale, J.* "The words of the enacting part of sect. 11 may perhaps be satisfied, if any part of the money expended in binding out the pauper be supplied from public parochial funds. Looking, however, to the object which the legislature had in view by that enactment, I think it does not apply to the present case. First, I think the words 'public parochial funds' mean the funds of some one particular parish which may have an interest in the binding. Here the officers of three parishes contributed, and it does not appear that any one of those parishes was interested in binding out the pauper to another; but, independently of that, this was not a binding, either directly or indirectly, by the parish officers. The great object of the legislature in sect. 11, was to prevent the parish officers from doing indirectly that which they were prohibited from doing directly by the former sections; and that being so, I think the enacting words must be restrained to cases where they are in substance and effect, though not in name, the binding parties, and where the binding takes place at their instance or instigation. The general preamble, as well as the preamble of the eleventh section, shows that the prohibition is intended only to meet those cases where the binding is either formally or substantially by the parish officers." *Taunton, J.* "I think the order of sessions was right on the ground stated in the case, that there was no binding by the parish officers, but only by Dr. Lye; and that the payment by the parishes was voluntary and not made in consequence of any legal obligation, there being no evidence that the pauper belonged to either of the parishes which contributed money, though it was charged and allowed in the respective parish accounts." *Patteson, J.* concurred. Order of sessions confirmed.

Rex v. Stoke Damarel, 7 B. & C. 563; 1 M. & R. Mag. Ca. 155. Jane Coleman removed from Stoke Damarel to Charles, Plymouth. Case:—The pauper, daughter of T. Coleman of Stoke Damarel, was bound apprentice on the 16th October, 1823, to J. Ellis of Charles. The indenture, which was on a one-pound stamp, was executed by the master, the pauper, and her father, and the allowance was written on the margin:—by which the said justices "do consent to, and allow, the putting forth the pauper an apprentice, according to the intent of this indenture." This allowance was signed by two justices, but was not under seal. Upon the binding an expense was incurred by the public parochial funds of Stoke Damarel, *i. e.* 9*l.* the consideration-money mentioned in the indenture; and a further sum, being charges attending the binding, from the date of the indenture until she was discharged from further service under it on the 3d July, 1826, by two magistrates. *Bayley, J.* "I do not know how to get rid of the words of this clause of the act of parliament; and where the legislature, in a very modern act, have used words

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Where an apprentice is bound, and part of the expenses paid out of the parochial funds, the indenture must be approved by two justices, "under their hands and seals," pursuant to 56 Geo. 3, c. 139, s. 11, or it will be void *ab initio*, and service under it will confer no settlement.

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of a plain and definite import, it is very dangerous to put a construction on them, which would have the effect of deciding that the legislature did not mean that which they have expressed. The earlier clauses apply to bindings by parish officers, but as there might be instances in which they would not ostensibly be the parties binding, although they furnished the means out of the parochial funds by which the binding was effected, it occurred to the legislature that it might be expedient to make some provision for that class of cases, and for this purpose the 11th sect. was introduced. It begins with a new recital, as if it were altogether a new enactment. Looking at the whole of the clause together, it clearly relates to a subject to which the preceding sections did not apply, and was intended to make provision for other bindings than those to which the parish officers are parties. It mentions indentures by reason of which expense is incurred by the parochial funds; and so far the indenture in question comes within its operation, because the premium was paid by the parish officers. It requires the indenture to be approved by two justices, *under their hands and seals*. The former sections do not require the allowance of the justices to be under seal; but here the word *seals* is added. Why should that addition be made, unless it was intended that the regulation thereby enjoined should be enforced? It is said that signing is enough; but how can we reject the words which require the allowance to be sealed? *Reddendo singula singulis*, and following the ordinary legal rules of construction, it seems to me that the legislature intended by this section to require, that in indentures of apprenticeship of this sort, there should be such an approval as was necessary in cases of parish binding, *and something more*, namely, that the seals of the magistrates should be affixed to their approval. Why such an additional formality should be required, it is impossible for us to know, and would be idle to inquire; but it is required: and we must suppose that in requiring it, the legislature meant that which they have expressed. Then it is said, that even if the sealing was intended to be required, yet the omission will not render the indenture absolutely void, but only voidable; in other words, that the indenture may be valid for some purposes, and not for others. I think the words 'valid and effectual,' were intended to apply to the indenture *ab initio*, and that it was the object of the legislature to make it binding *ab initio*, so that the parties should not be able to avoid it. The adoption of any argument to the contrary would be highly dangerous, for the parties would then be wholly at the mercy of each other during the whole of the apprenticeship; and either might leave the other unjustly shortly before the completion of a period of seven years. For these reasons, I am of opinion that this indenture was void, for want of an allowance by the magistrates under seal, and that no settlement was acquired by service under it." *Holroyd, J.* "I think this was not a binding by the parish officers, within the early sections of this statute, but that it was a binding within the meaning of the 11th section. That enacts not merely that no *parish* indenture, but that no indenture shall be valid, unless it has the approbation of two justices under their hands and seals. It seems to me that the true construction of these words is, that the approval shall be such as is required by the 43 of Eliz.; and by the former sections of the 56 Geo. III. c. 139, it shall also be under the hands and seals of the justices. It has been contended that the indenture is voidable only; upon that point I have entertained some doubt. But it is admitted that it was competent to either party to avoid such an indenture before the service expired. Here it was avoided, for the pauper was discharged. Assuming that the indentures were voidable, still as they were avoided, no settlement could be gained. As the indenture was avoided by the parties, it was thereby rendered 'not valid and effectual,' and no settlement was gained by the service under it." *Littledale, J.* took the same view as *Bayley, J.* and added, "that if the indenture was void, there was no necessity for a special enactment to prevent the gaining of a settlement."

The 56 Geo. 3, c. 139, s. 1, requiring that the order of justices for the binding

Rex v. Bawbergh, 2 B. & C. 222; 3 D. & R. 338. Order of removal of W. Pease from St. Andrew, to Bawbergh, confirmed. Case:—W. Pease was an illegitimate child, and by an order of two justices of the 11th May, 1819, and made under 65 Geo. III. c. 139, and an indenture, not stamped, was

bound an apprentice. The order of justices was set out at length; and the indenture stated, that the churchwardens and overseers, by and with the consent of two justices, whose names were subscribed, bound W. Pease, a poor child, as an apprentice for the term of seven years, &c.; but the indenture did not mention the date of the order of justices, nor did it appear whether they signed the indenture before or after the other parties. The parish officers of Melton paid the master the sum of 10*l*. (the premium stipulated to be paid by the indenture) and the pauper entered upon his apprenticeship, and served his master for a year and a half, when, on his master's failure, he left him. *Bayley, J.* "I am of opinion that this indenture is void, and consequently no settlement gained. The 56 Geo. III. c. 139, has introduced a variety of new regulations as to the mode of binding out parish apprentices. It requires that the child should be carried before two justices, and they are to inquire into the propriety of binding such child apprentice to the person to whom it shall be proposed by the overseers to bind him; and if the justices shall, upon the inquiry, think it proper that the child shall be bound apprentice to such person, the statute then enacts that the justices shall make an order, declaring that such person is a fit person to whom the child may be bound as apprentice, and shall thereupon order that the overseer of the place to which the child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer as the warrant for binding such child, and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto. The statute requires specifically that the order should be referred to by the date; and the object of that might be that the order might be found with facility at any future period. The statute then requires that the justices shall sign the allowance of such indenture. Now, the word 'such' is not immaterial; and the reference to the order by date is either directory only, or it is of the essence of the indenture. I am of opinion that it means such an indenture as was before required, viz. one containing the date of the order of justices. The fifth section then enacts, 'That no settlement shall be gained by any child who shall be bound by the officers of any parish, &c., by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture shall be signed as thereinbefore directed.' There must, therefore, be an allowance, not of such indenture, but of such indenture as was thereinbefore directed, viz. of one referring to the order of justices by the date thereof. I doubt whether the eleventh section applies to such a case as the present, or whether it applies only to such cases where the binding is by the parents, and not by the overseers; but I am clearly of opinion that, construing the first and fifth sections together, this indenture is void, and that no settlement was gained in Bawbergh by the service under it." *Best, J.* "The first and fifth sections are to be taken together, and then there can be no doubt that a settlement was not gained in Bawbergh, because in the indenture the order of the justices was not referred to by the date. Such indenture means the indenture before spoken of." Order of sessions quashed.

Rex v. Whiston, 1836. This was an indenture within the meaning of the 1st section of the 56 Geo. III. It recited the order, but the party relying on the indenture gave no evidence that the notices required by the 2nd section had been given. *Ibid.* It will be presumed that the preliminaries have been complied with, and that the parties have done their duty till the contrary presumption is raised, as in *Rex v. Harleyfield* (2 M. & S. 558.) MS. of Mr. Bere.

Rex v. Newark upon Trent, 3 B. & C. 59; 4 D. & R. 745. A pauper was, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of that parish to A. B. of another parish, in a borough situate in the same county, but having justices who had exclusive jurisdiction therein. The indenture was allowed by two county justices, but no notice was given to the overseers of the poor of the parish in the borough of

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shall be referred to in the indenture by the date thereof, is compulsory; and therefore, if such date be omitted, the indenture is void, and no settlement gained by serving under it.

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Notice must be given under s. 2 of 56 Geo. 3, c. 139, where an apprentice is bound from one parish into another, though both be within the same county and jurisdiction.

the intention to bind such apprentice ; nor did they or any of them attend before the county justices who allowed the indenture, and admit such notice. Held by Bayley, Holroyd, and Littledale, Js. (Abbott, C. J. dissentiente,) that the indentures were void for want of such notice, and that a service under them gained the pauper no settlement.

Rex v. Threlkeld, 1 Nev. & M. 14; 4 B. & Ad. 229. On appeal against an order of two justices, whereby William Thompson was removed from Keswick to Threlkeld, the sessions confirmed the order of removal subject to the opinion of the court on the following case. The pauper, a poor boy of and then legally settled in Threlkeld, was in February, 1819, pursuant to an order of two justices of that county, bound apprentice by the churchwardens and overseers of the poor of Threlkeld to E. Foster, of and residing at Keswick, by indenture for a term therein mentioned. Keswick is within the parish of Crosthwaite, and is about four miles distant from the township of Threlkeld, which is in the parish of Greystoke. Each township maintains its own poor separately, and both parishes are in the same county, and within the jurisdiction of the peace of the two justices who made the order for the binding, and who afterwards signed their allowance of the indenture. No notice was given to the overseers of the poor of Keswick, or to any of them, of the intention to bind out such apprentice : nor did any of the overseers of that township attend the justices who signed their allowance of the indenture or either of them and admit such notice, but the binding as well as the service and residence under it was in all other respects such as would confer a settlement upon the pauper in Keswick. The question for the opinion of the court was, whether such notice was necessary under the circumstances above stated. *Denman, C. J.* "The pauper gained a settlement in Keswick, unless he was prevented from so doing by the 56 Geo. III. c. 139, s. 5, which enacts 'That no settlement shall be gained by any child who shall be bound by the officers of any parish, &c. by reason of such apprenticeship, unless such order shall be made and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed.' It is said here that there have not been such an order and such allowances of the indenture signed as by the act directed, and I am of that opinion. The act of parliament contains a proviso (s. 2) that 'notice shall be given to the overseers of the poor of the parish, or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice.' Now here the sessions have found that no notice was given to the overseers of Keswick, nor did the overseers of that parish attend before the justices and admit such notice. But it is contended that notice is not necessary in a case where the binding parish and that in which the apprentice is to be bound are within the same county and consequently within the jurisdiction of the same magistrates. But the object of the legislature being, as may be collected from the preamble, that every possible precaution should be taken in the binding out of the poor apprentice, it is manifest that the same necessity for notice may exist in either case. It seems to me absurd to say that merely passing the boundary of the county should render that necessary in one case which was not so in another. The provision that 'no settlement shall be gained unless such order shall be made,' &c. is for the advantage of the apprentice, because it then becomes the interest of the officers of the binding parish to take care that the apprentice shall be well bound. With all deference to the opinion of Lord Tenterden, in *Rex v. Newark upon Trent* (4 D. & R. 745; 3 B. & C. 59; ante, 529), and admitting that the different clauses of this act of parliament are not easily reconcileable with each other, I think that the proviso as to notice, in the second section, is not confined to cases where the two parishes are situate in different counties, but that it extends to all the cases mentioned in the first section as well as the second. There are no words to control or limit that construction; it is beneficial to the apprentice, and by adopting it we do not violate the grammatical sense of the language used by the legislature." *Parke, J.* "I am of the same opinion.

The doctrine that an act of parliament is to be construed so as to favour settlements has been long and justly exploded. There is no rule of law which calls on us to put a strict construction on this act of parliament; we must endeavour therefore to discover the intention of the legislature and carry it into effect if the language used will warrant us in so doing, and the question is, whether putting a proper grammatical construction on the proviso, it is confined to cases where the two parishes are situate in different counties, and consequently within the jurisdiction of different magistrates, or extends to those where the parishes are in the same county and jurisdiction. The circumstance of its being printed as part of the second section can make no difference in the construction, because on the parliament rolls the acts are not divided into sections. Now the terms of the proviso are, 'and notice shall be given to the overseers of the poor of the parish in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish shall be shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture.' The language would be more accurate if it had been said 'before he shall allow, and before he shall make the order for the binding;' but the word *allow* is used in the statute as common to both. The language therefore of the proviso is sufficiently large to include cases where the parishes are in the same, as well as where they are in different counties, and the sense and reason of the thing seem to require also that it should extend to each class of cases. I thought, also, that reason required that the first part of the proviso should be general; but as a different opinion was expressed by some of the judges on that point in *Rex v. Newark upon Trent* (3 D. & R. 755, 763; 3 B. & C. 71, 84), I do not wish to give any decisive opinion upon it; if, however, the first part of the proviso extends to all cases, the second undoubtedly does; and if the first does not so apply, no reason can be given why the second should not. Upon the whole, I think the opinion delivered by *Holroyd, J.*, in *Rex v. Newark upon Trent*, is perfectly correct, that notice was necessary to be given in this case, and that for want of such notice no settlement was gained in Keswick." *Taunton, J.* "I frankly acknowledge there are some expressions in the second section which I do not perfectly understand, but they are not material to the question before the court: I see enough to convince me that the order of sessions is right. That part of section 2, which begins with the words 'and notice shall be given,' is a general enactment, applicable to all the cases embraced in the first section. As to the part which begins with 'provided always, that no indenture shall be allowed,' &c., I am by no means satisfied that those are not words of general enactment, but however that may be, the words respecting notice are undoubtedly general, and the sense and reason of the thing require that they should be so. There may be as much reason for requiring notice in a case where the two parishes are in the same county, as where they are in different counties. Two parishes in the same county may be at a great distance from each other, and two parishes in different counties may be adjoining each other, and it is manifest that notice may be as necessary in the one case as the other. Where indeed the two parishes are in different counties notice need not be given to the overseers of the master's parish until the parties go before the magistrate having jurisdiction over that parish; but where the two parishes are in the same county, the notice must be given before the indenture be allowed. The order of sessions must be confirmed." *Patteson, J.* "I am of the same opinion. I see that by sect. 2 notice is required to be given to the overseers in all cases. The early part of sect. 2 requires that the indenture shall be allowed by the magistrates having jurisdiction over the place from which the apprentice is to be bound, as well as by the magistrates of the place into which the apprentice is to be bound. If the parishes are within different jurisdictions, two sets of justices are required; if within the same, only one; but in the latter case they are magistrates for each parish. Where there are two allowances notice need not be given to the overseers of the master's parish till the parties go to the second set of justices, because they are the persons who are to make the order; but where there is only one set of justices, notice must be given to the overseers of the

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An indenture stated that the overseers and churchwardens of M., in the county of W., with the consent of justices of the said county, bound a pauper apprentice to T. W., of H., in the county of L., and the justices, in their written consent in the margin, described themselves as justices of the county *aforesaid*: Held, that it sufficiently appeared that they were justices of the county of W.

master's parish before the indenture be allowed by the justices making the order. I am therefore of opinion that the order of sessions was right." Order of sessions confirmed.

Rex v. Hinckley, 1 B. & A. 273. Removal from the liberties of Monks Kirby, in Warwickshire, to Hinckley, in Leicester. Order confirmed. Case:—The pauper was bound apprentice by the churchwardens and overseers of the liberties of Monks Kirby, to J. Wright of Hinckley, by a parish indenture, of the 3rd of August, 1795, which stated that J. B., and E. B., churchwardens of the liberties of Monks Kirby, in the county of Warwick, and S. C., and J. T., overseers of the poor of the said liberties, *by and with the consent of the justices of the peace for the said county*, had placed W. Sansom, aged eight years, apprentice to J. Wright, of the parish of Hinckley, in the county of Leicester, frame-work knitter, him to serve until the apprentice should be twenty-one. The indenture was executed by all the parties thereto, and in the margin the magistrates stated their consent, but described themselves as justices *for the county aforesaid*. The pauper served under this indenture in Hinckley during the whole of the period. The magistrates who signed the allowance of the indenture were magistrates of Warwick and also of Leicester. After hearing counsel, Lord *Ellenborough*, C. J., said, "It is quite clear that the words 'county aforesaid,' can only refer to the county of Warwick. The justices, we must presume, read the indenture before they allowed it; and indeed their very words of reference prove that it must have been so: then if they did read it, they must have known that they had no authority to act, except as justices of the county of Warwick. The question after all really is, whether *said county* and *county aforesaid*, mean the same thing. If they do, it is evident from the body of the instrument that the words 'said county,' can only apply to the county of Warwick. It will follow, that the words 'county aforesaid,' must have the same application." Order confirmed.

10. *Of the Enrolment of the Indentures.*

10. OF THE ENROLMENT OF THE INDENTURES. (a)

The 5th Eliz. c. 5, s. 12, required that the indenture of apprenticeship to masters of ships *should be enrolled* in the town where the apprentice was inhabiting at the time it was executed, if it be a town corporate; and if it be not a town corporate, then to be enrolled in the next town incorporate to the habitation of such apprentice; and that the officers of every such town corporate shall take for every such enrolment not above twelve pence, (*ante*, 452). [See also 2 & 3 Anne, c. 6.]

The 6 Geo. IV. c. 107, s. 138, (*ante*, 483,) enacts, "That no person shall be deemed an apprentice, for the purposes of 4 Geo. IV. c. 25, as to apprentices on board British merchant vessels, (*ante*, 480,) unless the indenture shall have been enrolled with the collector and comptroller of the port from which the apprentice shall first go to sea, or until the same has been enrolled at some port from which the ship shall afterwards go to sea."

But one bound apprentice to a mariner was held settled by service under his indenture, although not enrolled in the town where the apprentice was then inhabiting, nor in the next incorporate town to his habitation, pursuant to 5 Eliz. c. 5, s. 12, nor with the collector of customs, pursuant to 2 & 3 Anne, c. 6. See *Gainsborough v. Westockwith*, Burr. S. C. 588; and per Lord *Mansfield*, "It would be very hard that the apprentice should suffer for the master's neglect. I think the cases have gone too far upon the stamp act. It is *summum jus*, and has been considered *strictly* on account of the preservation of the duties payable to the crown.

It is however important, by custom of London and other places, that the indenture should be enrolled, in order to entitle the apprentice to his freedom, and which may be compelled by *scire facias* or *mandamus*. (b)

(a) See division of the subject, *ante*, and *Chitty's Law of Apprentices*, 59 to 61.

(b) See 2 T. R. 2; *Peak's Rep.* 159;

11. OF THE SERVICE AND RESIDENCE. (a)

11. Of the Service and Residence.

An apprentice may have to serve his master in a great number of different parishes or places, and may abide a sufficient length of time in each to establish a settlement in each consecutively; but the right is ultimately fixed in that place where he has last completed a forty days' residence under the indenture.

It may be proper here to remark, that as a forty days' residence is sufficient to give a settlement under a valid binding, it is possible that *the apprentice may gain as many settlements as there are spaces of forty days in the term of his apprenticeship; and where he serves the last forty days, there is his last settlement.* It thus appears that he may often gain a settlement long before his master gains one; as where the master's settlement is to arise from executing an annual office, or by residence upon a 10*l.* tenement for a year. He may also gain a settlement whilst his master is unable to gain one; as where his master resides upon a tenement of less annual value than 10*l.*, or does not occupy for the whole year where the renting is sufficient in amount. It follows that the master may be removed, when the apprentice is irremovable, by an order of justices under the poor laws; and in such case the master must of necessity apply to the justices to compel the apprentice to go along with him.

Holy Trinity v. Shoreditch, 1 Str. 10. *Parker*, C. J., delivered the resolution of the court. Ferrer was removed from the parish of Holy Trinity to Shoreditch. He was bound apprentice to one Truby, of Holy Trinity, in Shoreditch, with intent that he should serve Green: which he did for three years. We are of opinion the justices have done right in sending him to Shoreditch, where the service actually was. It is the same thing as if Truby had turned him over to Green; in which case there would have been no question but he had gained a settlement in Green's parish.

If an apprentice be bound to one, with intent to serve another, his settlement is in the parish where he served, though the master had no settlement there.

St. Bride's v. St. Saviour's, 2 Salk. 533. A woman who was settled at St. Saviour's, with her apprentice, by indenture, came and took a lodging in St. Bride's, and there continued above forty days with her apprentice, who served her there. This was held by the court to be a settlement of the apprentice at St. Bride's, though the mistress had no settlement there.

Quære, though master had no settlement there.

St. John Baptist v. St. James's, *Bishop Cannings*, 2 Raym. 1371; 1 Stra. 594. Binding and serving will not make a settlement, but the settlement must be by inhabiting, which cannot be but where the party lodges.

Residence is where the party lodges.

Rex v. Castleton, *Burr*. S. C. 569; 2 Bott, 526. The pauper, John Holroid, was bound to a master at Castleton for seven years. He worked, dieted, and lodged with his master in Castleton for four years and a half, and then married. After which marriage he worked and dieted with his master in Castleton in the day time; but lodged at nights with his wife's father in Hundersfield, until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. Lord Mansfield, C. J. "Clearly he gained a settlement in Hundersfield."

An apprentice, working by day in one parish, and sleeping by night in another, obtains a settlement where he lodged, by lodging there at nights.

The contrary had been held in *Rex v. St. Olave's Jury*, 1 Stra. 51, where the facts were that A. was bound to a cobbler, who kept a stall in D., slept in F., and the boy in E., and it was held that no settlement was gained in either: the stall not being sufficient, the master lying in another parish. The authority of this case is very doubtful.

Rex v. St. Peter's on the Hill, 2 Bott, 524. The pauper was bound an apprentice to a carpenter, and served two years in St. P., during which he lived, ate, and lodged at night with his mother in St. O. Lee, C. J. "There is a distinction in this case between apprentices and servants. The statute is, that apprentices gain a settlement by *binding and inhabitation*, not by *binding and service*; but servants gain a settlement by *hiring and service*, without regard to inhabiting. *Rex v. St. John's*, *Devizes*, (T. 10 Geo. I.) seems to me a very odd determination; all the cases I am acquainted with

(a) See division of the subject, ante, 451.

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Forty days' residence successive. ly not necessary.

An apprentice may gain a settle- ment by residing in a parish during his apprenticeship forty days though not within the compass of any one year.

Where an ap- prentice lived with his master forty days in A., then forty days in B., and then one day in A., his settlement was held to be in A.

A residence merely on account of illness, where no service is per- formed, does not confer a settle- ment.

being to the contrary, as *St. Mary, Colechurch, v. Radcliffe*; *Rex v. Graveny*." The order of removal to St. O. was confirmed.

Rex v. Cirencester, 1 *Str.* 579. An apprentice bound in the parish, lived there off and on for three quarters of a year. Exception was taken, that he did not inhabit forty days together. But by the court: "That is not necessary."

Rex v. Aldstone, 2 *B. & Adol.* 207. Upon appeal against an order of two justices, whereby Edward Davison, and his wife and children, were removed from Hexham to Aldstone, the sessions confirmed the order. Case:—The respondent parish of Hexham established a *prima facie* settlement of the pauper, Edward Davison, by parentage, in the parish of Aldstone. The appellants then proved that the pauper, E. Davison, when about nineteen years of age, bound himself as an apprentice to John Ostle, of North Shields, in the county of Northumberland, ship-owner, by indenture bearing date the 26th of August, 1809, for the term of three years; that in the first year of the pauper's apprenticeship the vessel in which he served was moored for a month in the township of Middleborough, in the county of York, which township separately maintains its own poor, and that in the second year the same ship, in which the pauper still continued to serve, was moored in the same township of Middleborough for five weeks, and that during the said month and five weeks he slept on board the ship. The question for the opinion of this court was, whether the pauper, E. Davison, gained a settle- ment in Middleborough under the indenture of apprenticeship, the forty days of his residence in that township not having been in one and the same year of his apprenticeship. Lord *Tenterden*, C. J. "This case falls within the decision of *Rex v. Gainsborough* (*Burr. S. C.* 586.) There the pauper, while apprentice, resided forty days in the whole in West Stockwith, at many different times during a term of three years and a quarter, and was resident no where else forty days during that period, and he was held to be settled in West Stockwith." *Littledale*, J. "There is a distinction between contracts for service and for apprenticeship. In the former case there must be a year's service under a yearly hiring to confer a settlement; the forty days' residence must therefore be within the year. But the service under a contract of apprenticeship has no reference to the term of a year." *Parke*, J., and *Patteson*, J. concurred. Order of sessions quashed.

Rex v. Brighthelmstone, 5 *T. R.* 188. J. Humphrey was removed from Wivelsfield to Brighthelmstone. Order confirmed. Case:—J. Humphrey was, at the age of fifteen years, bound an apprentice to J. Soper, of Alfriston, weaver, to serve from 3d November, 1774, for seven years; he served and resided with Soper in Alfriston until 9th July, 1781; from that time until the 21st September following he served and resided, by direction of his master, in a shop hired by his master at Brighthelmstone; he then returned to and served and resided with his master in Alfriston until 22d of October following, when he was sent by his master to the master's father in West Grinstead, to serve out his apprenticeship, where he resided until 3d November following, when his apprenticeship expired. The court said that the decision of this case must be governed by those of former cases, and that the distinc- tion attempted to be made between the cases of servants and apprentices could not be supported; but that they should both fall within the same rule, and that *Rex v. Lowess* and *Rex v. Hulland* governed this case, where it was determined that when a servant lives with his master forty days in one parish and then forty days in another, and then returns and stays one day in the former parish, his settlement will be there. *Ashhurst*, J. "The settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for forty days in that parish *in the whole*." Both orders quashed.

Rex v. Barmby in the Marsh, 7 *East*, 381. The pauper was removed from Barmby to Selby, and order quashed. Case:—The pauper, J. Martin- dale, was bound apprentice by indenture, 1st April, 1794, for four years, to J. B., of Hunslet, who was the master of a small vessel trading on the Ouse. The pauper slept more than forty nights during his apprenticeship at Selby,

at different times, but slept the last night at Barmby, at his grandmother's, in which latter place he had slept more than forty nights, in consequence of his being ill of a fever. He went to B., with the consent of his master, who received him again as his apprentice; and he never slept there except as above stated. The court were of opinion that the residence of the pauper in B. being on account of illness, was not a residence as an apprentice, and that the inhabitation required by 3 Will. III. c. 11, must be referable in some way to the apprenticeship. But that the residence here with the grandmother was no more referable to the apprenticeship than if the pauper had resided in a hospital or a prison. Order of sessions quashed.

Rex v. Charles, Burr. S. C. 706. J. Hodge was bound apprentice by the parish of Knowstone to John Fisher, of K., for an estate which Fisher rented of Mr. L., who had covenanted with F. to discharge him from any expense that he might incur thereby. On Fisher's application, Mr. L.'s widow and representative (he being then dead) took the boy, received the parish money with him, carried him home with her, and afterwards removed to the parish of Charles, where the boy resided with her about three years, and then became a cripple by losing both his feet. She then returned him to Fisher, who received him, upon her promise to pay him all the expense he should be at in taking care of him, and put him to live with his (the boy's) grandmother in Knowstone, at 8*d.* a week, where he resided above forty days, and then was discharged of his apprenticeship. After which he was removed to Charles, where he served the last part of his apprenticeship before he became disabled. By the court: "The performance of actual service is not the thing material. It is the *residence*, the *inhabitation* of an apprentice in a parish for forty days that gains the settlement. And this residence here stated cannot be deemed a casual residence, and therefore is not to be compared to the cases under that head. The boy was bound to F. at K., resided about three years in C., then became a cripple; was sent back to F. at K., received by him, and put by him to live with his grandmother at K., and resided there above forty days, during which time he there gained a settlement." (b)

Rex v. Foulness, 6 M. & S. 351. The pauper was bound apprentice as a mariner for three years to James Potter, of Foulness, owner of a barge, in which he made several voyages from London to Foulness. Previous to his last he had slept thirty-five nights in Foulness. On the last voyage, his master quitted the vessel, and was never heard of for the remainder of the three years. The pauper returned to Foulness in the vessel, and continued on board two days. Then being ill, he applied to his master's wife, and was by her direction taken to the poorhouse, because she was unable to afford him accommodation in her own house: but she maintained him at her expense, in expectation of her husband's return, during the three weeks he was in the poorhouse, and only ceased to do so on account of her distressed situation, having nothing for him to do. He was afterwards supported by the parish. Another joint owner took charge of the barge, and another apprentice continued on board, and so would the pauper if he had not been ill. Lord *Ellenborough, C. J.* "I consider that the residence of the apprentice in the poorhouse was virtually a residence in the master's house, under a continuance of the contract. The wife maintains him there out of her pittance until it fails, in expectation of her husband's return, and for the purpose of continuing the service until his return." Bayley, J. "In *Rex v. Barmby* the apprentice was residing at a distance from the master, and with his own friends: here he was maintained at the master's expense. Why was he so maintained, excepting by reason that the master was under a legal obligation,

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An apprentice was turned over to a person in another parish, where he served above forty days, and returned, a cripple, to his original master, who sent him to board with his grandmother: Held, residence with the grandmother would gain a settlement. (a)

If the pauper, being ill, is put by the master, and at his expense, in the workhouse, it is a residence under the indentures.

(a) In *Rex v. Banbury* (post, 537), Lord *Tenterden* observed, "It is not easy, if possible, to reconcile these cases."

(b) In *Rex v. Stratford-upon-Avon*, (post, 541), *Le Blanc, J.* observed, that "It was not considered in this case that

the pauper went to *Knowstone* for the purpose of cure, but that the original master, who lived in the same parish, and was bound to receive him, did receive and place him there."

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A pauper was duly apprenticed to a farmer residing in parish A., and served him there, but before the expiration of the apprenticeship the farmer having failed in business, placed the pauper with another farmer in parish B., and the pauper served the latter in B. for nine months, when becoming ill and disabled from service, he returned to his first master in parish A.; the latter having no accommodation for him, told him to go to his mother, who lived in that parish. The pauper did so, and his first master, a few days after, promised his mother to remunerate her for taking care of the pauper. The pauper continued to reside with his mother in A. for about eight weeks, his first master also being resident there, but did not perform any actual service for him: it was held that the pauper resided in A. in the character of apprentice, and thereby gained a settlement.

as master, to maintain him in sickness? If the character of an apprentice had ceased, the wife might have abandoned him, and sent him to his own parish."

Rex v. Linkinhorne, 3 B. & Adol. 413. On appeal against an order of two justices, whereby William Wallis and his family were removed from Linkinhorne to St. Cleer, the sessions quashed the order. Case:—The pauper was duly bound apprentice by the churchwardens and overseers of the parish of St. Cleer to John Gadgcombe, of that parish, farmer, and served him in St. Cleer, under the indenture, for about six years, when Gadgcombe having failed in business, agreed to place the pauper with T. Little, of the parish of St. Pinnock, in the said county, farmer. No assignment or transfer of the indenture was made, but the pauper, in March, 1816, went to and served Little in St. Pinnock, with the consent of Gadgcombe, for nine months. The pauper then becoming ill and disabled for service, went back to Gadgcombe, in the parish of St. Cleer, and he having no accommodation for the pauper, told him to go to his mother, who lived in St. Cleer, promising to come and agree with her for his board and maintenance. The pauper went to his mother accordingly, and a few days after, Gadgcombe came and promised the mother to remunerate her for taking care of her son, and took the pauper to a medical man for advice. The pauper continued to reside with his mother in St. Cleer for about eight weeks, Gadgcombe also during that time being resident in St. Cleer, but the pauper did not perform any actual service for Gadgcombe during that period. The sessions were of opinion, that for want of such service the last legal place of settlement of the pauper was in St. Pinnock. Lord Tenterden, C. J. "The decisions on this branch of the law run very near to each other, and are hardly reconcilable. I agree that the mere continuance of the contract during the absence of the apprentice from his master is not sufficient; but I do not agree that the performance of some service by the apprentice is absolutely necessary to enable him to gain a settlement in a parish different from that where the master lives. I think less than that will do, and that it will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in a place where but for that contract it would not have been. The word service is not mentioned in the statute 3 W. & M. c. 11, s. 8, but binding and inhabitation. Here I think it is evident that the boy's residence with his mother in St. Cleer was in pursuance of the contract of apprenticeship, for during all that time the master was bound to maintain him, and did so in performance of his part of the contract. The pauper was therefore settled in St. Cleer." *Littledale*, J. "Although no actual service was rendered by the pauper while he resided in St. Cleer the last eight weeks, such residence was in pursuance of the contract of apprenticeship. He returned to his master with the intention to reside with him and to perform service as soon as his health permitted. Illness alone prevented it. He went to his mother's house by desire of his master. His residence there is to be considered as if he had continued in the master's house; and if he had been taken ill while residing there, there could have been no doubt that he would have gained a settlement in St. Cleer, although he performed no service. That the master considered him as residing with his mother in pursuance of the contract of apprenticeship, is shown by the fact of his having agreed to maintain him during that time." *Parke*, J. "I am also of opinion that a settlement was gained in the parish of St. Cleer. The question arises on the statute 3 W. & M. c. 11, s. 8, which enacts that 'if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement.' The statute says nothing of actual service. The true construction, as stated by Lord Tenterden in *Rex v. Ilkeston* (6 D. & R. 67; 4 B. & C. 67, *post*, 538), is, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. Now, applying that rule to the present case, the pauper's residence in St. Cleer was not casual, for he came to that parish because the master was bound to receive and maintain him. The residence there consequently was connected with the apprenticeship. The dictum, that service is one of the

essential requisites to confer a settlement, cannot be supported. Service may be material as showing that the residence is in the character of apprentice, but that may be shown by other facts. Here the residence appears undoubtedly to have been in the character of apprentice, and was so considered by the master, for he agreed to maintain the pauper during the time of such residence." *Patteson, J.* "Service is a criterion, but not the only one whereby to determine the character of the residence, and the facts stated in this case abundantly show that the pauper resided in St. Cleer as an apprentice. *Rex v. Charles* (*Burr. S. C.* 706, *ante*, 535), is in point, and has not been over-ruled. The order of sessions must be quashed." Order of sessions quashed.

Rex v. Banbury, 2 *Nev. & M.* 205; 3 *B. & Adol.* 706. On appeal against an order of two justices, whereby George Stanton and his wife were removed from Banbury to Kingsutton, the sessions quashed the order. Case:—The pauper George Stanton was by indenture of apprenticeship, dated the 7th April, 1825, bound apprentice to W. Kimbury, of Banbury, cork-cutter, for the term of seven years. The consideration money paid to the master was 21*l.*, and the master covenanted to teach the apprentice his trade, and find him sufficient meat, drink, clothing, lodging, washing, and all other necessaries, during the term. The pauper, upon the execution of the indenture, entered into the service of his master at Banbury, in which service he remained seven weeks, working at cutting corks, after which, the pauper having a weakness in his eyes, his master told him that he must go back to his father, as he could not see to work at his trade. The pauper accordingly went home to his father's house at Kingsutton on the Saturday following, where he stayed till the next Monday morning. The pauper and his father then went again to the master, who refused to receive the pauper, upon which all the parties went before a magistrate, and the father made a complaint against the master for refusing to receive the pauper. The magistrate informed the master that he must return the premium or maintain the apprentice. The master stated that he could do that, and the pauper, his father, and the master then went to the master's house, where it was agreed that the master should give the pauper two gross of corks per week, to be of the value of 2*s.*, per gross to maintain him. The pauper then went home, and lived with his father (who was a labourer and receiving parish relief) at Kingsutton, for two years, during which time the pauper received the corks from his master, according to the agreement between them. He sold the corks, and did any thing he could get to do, working for any one who would employ him. During those two years the pauper did no work for his master, unless hawking the corks so furnished to him could be considered as a service under the indenture. The pauper did not account with his master for the corks so furnished to him, or their proceeds, and the pauper's father sometimes sold the corks. At the expiration of two years, in consequence of the master giving the pauper bad and valueless corks, the pauper was taken back by the father to his master, with whom he (the pauper) lived about ten days, and during that time he went out hawking corks for sale for his master. He slept on the night of the last of those ten days at the master's house in Banbury. At the end of the ten days the master told the pauper that he must go home again, on account of the badness of his sight, and he agreed to let the pauper have a gross of the best corks per week. Accordingly the pauper went back to his father's at Kingsutton, and lived with him again till his indentures were discharged as hereinafter stated, and during such period the master furnished the pauper with the corks according to the last-mentioned agreement, which corks the pauper sold and received the proceeds, doing no work for his master, but getting employment as he could. The pauper during his apprenticeship slept more than forty nights at Banbury, and more than forty nights at Kingsutton, but he slept in his father's house at Kingsutton on the night of

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Apprentice bound to a cork-cutter in B., for seven years; after seven weeks, owing to weakness of eyes, the master sent him back to his father, and agreed to allow him corks to value of 4*s.* per week for his maintenance: Held, that the apprentice gained a settlement in K., residing and being maintained there as an apprentice. (a)

(a) In this case the judges speak of residence only in another parish, as if residence in the same parish, without reference to the indenture, would be sufficient. But this is not so. See *Rex v. Charles* (*ante*, 535); and *Rex v. Smarden*, (*post*, 544).

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the 5th July, 1829, and on the 6th July, 1829, he was discharged from his apprenticeship by an order of two justices. Lord Tenterden, C. J. "I am of opinion that the pauper gained a settlement in the parish of Kingsutton under the circumstances stated in this case. It is not easy, and perhaps not possible, to reconcile all the cases on this subject. But this principle may be collected from them all, that where the residence in a parish different from that of the master is unconnected with the apprenticeship no settlement is gained. The cases where paupers have removed to other parishes on account of illness, or for the purpose of visiting friends, neither receiving maintenance nor performing service, are illustrations of this part of the rule. On the other hand, if during the residence in a parish different from that of the master, the apprentice performs service for his master there, his residence is then considered referable to and connected with the apprenticeship, and he gains a settlement. There is also a third case, where the master assents to the residence of his apprentice in a different parish, and maintains him there, though no service be performed. The master covenants by the indenture to teach the pauper, and also to maintain him. Here he certainly did not teach the apprentice while he resided in Kingsutton, but he did maintain him. That was one of the objects of the apprenticeship, and it was satisfied; and I think it is sufficient to connect the residence of the apprentice in Kingsutton with the indenture, and that the safer course will be to hold that such residence was referable to the apprenticeship, by reason of the maintenance of the pauper in that parish." *Littledale, J.* "I am of the same opinion. The master here, in consequence of what passed before the justice, agreed to allow the pauper, while residing at his father's house, a quantity of corks per week to maintain him. The residence of the apprentice in his father's parish of Kingsutton is therefore accounted for by his master's maintaining him there according to that agreement. The cases upon this subject turn upon very refined distinctions; but I think here the residence in Kingsutton is referable to the apprenticeship by reason of the maintenance." *Parke, J.* "I am of the same opinion. It may be collected from the decisions, that the residence in a parish different from that of the master must be connected with the indenture, or as it is laid down in *Rex v. Ilkeston* (6 D. & R. 64; 4 B. & C. 64, *infra*), in furtherance of the object of the apprenticeship. Now that object is twofold, maintenance and instruction. The one is as much the object of the indenture as the other. *Rex v. Charles* (Burr. S. C. 708, *ante*, 535), and *Rex v. Linkinghorne* (3 B. & Ad. 413; *ante*, 536), show that actual service in the parish where the apprentice resides is not necessary to give a settlement. If the pauper be permanently maintained by the master during the residence, one of the objects of the apprenticeship is attained, and it is immaterial in what parish the maintenance is afforded. The cases run very near to each other. *Rex v. Brotton* (4 B. & A. 84, *post*, 544), is like this case in some respects; but there an express stipulation was made in the indenture, by which the master dispensed with the services of the apprentice during the winter, the time of the residence upon which the question of settlement arose." *Taunton, J.* "In the cases which have been referred to, and in which the residence was held not to have taken place under the apprenticeship, the pauper was not under the control of the master, and there was no other circumstance from which it could be said that the residence was in pursuance of the contract. But here the relation of master and apprentice clearly continued until the indenture was discharged. The agreement of the master to allow the apprentice corks, by the sale of which he was to maintain himself in Kingsutton, shows that the residence there was in pursuance of the contract of apprenticeship; and therefore, without breaking in upon any decided case, I think we may hold here that the settlement was in Kingsutton. The order of sessions must be quashed." Order of sessions quashed.

Inhabitation by
indulgence is not
sufficient.

Rex v. Ilkestone, 4 B. & C. 64; 6 D. & R. 64. Ann Whingates was removed from Radford to Ilkestone. Order confirmed. Case:—John W., the pauper's husband, was bound apprentice by indenture 22d December, 1818, for seven years, to B. Roberts, a boat-builder, of Ilkestone. He

lodged and worked with his master in Ilkestone, but regularly and with the consent of his master went to his father's at Radford on the Saturday night, slept there on the Saturday and Sunday nights, and returned to his master on the Monday morning. On the Saturday before the Nottingham fair, in October, 1822, the pauper's husband went to his father's as usual, slept there on the Saturday and Sunday nights, and returned to his master on the Monday, and worked for him that day, and in the evening asked and obtained his master's permission to go home again, for the purpose of being at the fair at Nottingham on the two following days. He left his master's that evening accordingly, and never returned, having enlisted for a soldier a few days afterwards. The pauper's husband did no work for his master on Saturday nights or Sundays, or at any other time while he was at his father's. The indenture was retained by the master till applied for some days after the pauper's husband had enlisted, when he gave it up. *Abbott, C. J.* "I am of opinion that the husband of the pauper did not gain a settlement in Radford, the place of his father's residence, but at Ilkestone, the place of his master's residence. The true construction of sect. 8 of 3 W. & M. c. 11, appears to be, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. An inhabitation by indulgence is not then within the statute. Here the residence in Radford was by indulgence only. There may be cases, and some such have arisen, where an inhabitation in a parish, different from that in which the master resides, may be in furtherance of the service; as where a master cannot take an apprentice into his own house, and appoints and allows him to choose a residence in another parish, so that he may return to his work every morning. But here the sleeping in Radford was merely for recreation, and had no connection with the service." *Bayley, J.* "Where the master appoints no place for the pauper to sleep, or appoints a place out of the parish where the service is performed, I agree that a settlement is gained where the apprentice sleeps, and this was the ground on which *Rex v. Castleton* (ants, 533), and *Rex v. Stratford-upon-Avon* (post, 541), proceeded. *Le Blanc, J.* expressly puts it on the ground that the pauper slept in Old Stratford as an apprentice. But if he in general resides with his master, and is allowed once a week as an indulgence to visit his parents, he does not lodge there as an apprentice; and the case is not varied if the indulgence is for days or months."

Rex v. Warden, 1 M. & R. Mag. Ca. 277. Order of removal of Susanna, wife of George Kirsopp, &c. from Warden to Whickham quashed. Case:—George was bound apprentice to his uncle, George Elliott, a stone-mason, about the 25th December, 1803, for seven years, to learn the art of a stone-mason; and John, the father of the apprentice, was a party to the indenture. The apprentice went on May-day, 1809, with his master to reside in Whickham. The master worked as a journeyman mason at Ravensworth Castle, Lamesly, and the apprentice worked there with him, sleeping at a lodging in Lamesly five nights in each week, and Saturday and Sunday nights in his master's house at Whickham, to which he went every Saturday, and returned to his work every Monday. The apprentice slept above forty nights in Lamesly, and also above forty nights at Whickham, during his service under the indenture, previous to the 25th March, 1810. On the 24th March, 1810, on a Saturday afternoon, as the apprentice and his master were returning from their work at Ravensworth Castle to Whickham, they mutually agreed that the master, upon being paid 3*l.* should set the apprentice at liberty, and give him up his indenture of apprenticeship. After this agreement the apprentice went home with his master to Whickham, and slept there that night. He had slept the previous night in Lamesly. The next morning the apprentice went to his father, and his father gave him 3*l.* to pay to his master for giving up his indenture of apprenticeship, and setting him at liberty. The apprentice returned in the evening to Whickham, and paid his master the 3*l.* This agreement on unstamped paper was then drawn up: "This is to certify that a mutual agreement has taken place between G. E. and G. K. as to delivering up to the apprentice his indenture, this 26th day

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An apprentice, working with his master during the week in one parish, and sleeping on Saturday and Sunday nights at his master's house in another, may gain a settlement in the latter parish by inhabitation under his indenture. A verbal agreement by a master, "upon being paid 3*l.* to set his apprentice at liberty, and to give him up his indenture," does not discharge the indenture so as to fix the settlement of the apprentice in the parish where he slept last before the making of such agreement.

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of March, 1810, his seven years being expired at 25th December, 1810; for which time he, at this period, pays to his master 3*l.* for the *time* unexpired. Signed, George Elliott." The indenture was not then delivered up, it having from the time it was executed remained in the possession of Mr. L., who prepared it. G. K. was nearly, but not quite, twenty-one years of age. He slept in Whickham that Sunday night, and the following day began to work, entirely on his own account, at Ravensworth Castle, where he continued to work about a month, unconnected with his master, and receiving the whole of his own wages; and during that time he slept at Lamesly, not in the lodging which he had previously occupied with his master, but in a distinct lodging taken by himself. The master also continued to work at Ravensworth during the same month that the apprentice remained working there. G. K., after leaving Ravensworth, went to Newcastle, where he worked on his own account, and soon after he delivered the before-mentioned agreement to his father, who giving it to Mr. L., received the indenture from him, and sent it to his son. Lord *Tenterden*, C. J. "The case of *Rex v. Ilkestone* (*ante*, 538), is very distinguishable from the present. There the apprentice was allowed by his master, as a matter of indulgence, to go to his father's every Saturday, and to sleep there every Saturday and Sunday night; and it was expressly found there that the apprentice during those periods of absence did no work for his master. Here the apprentice returns with his master from their work and goes to his master's house, where he passes the Saturday and Sunday nights, and on the Monday again accompanies his master to work, having been in the interval under the eye and control of his master, and for ought that appears, performing all his biddings. He therefore slept at Whickham in his character of apprentice, and was an inhabitant of that parish under his indentures. The verbal agreement made on the Saturday between the apprentice and his master certainly could not operate as a discharge of the indentures, so as to transfer the settlement to Lamesly; therefore the settlement was rightly decided in the first instance by the justices who ordered the pauper to be removed to Whickham." The other judges concurred. Order of sessions quashed.

Where an apprentice, who worked and slept at his masters', in C., at weekly wages, went, with their knowledge, on Saturdays and Sundays to R., and slept there, and returned to his work on Mondays, and was received by them; and on the Saturday before Shrove Tuesday (having the night before slept at C.) received his pay, and never returned again to the service, and slept that and the following evening at R., but on quitting the works on Saturday had not formed any intention not to return: Held, that his settlement was at C., his service having ended on his quitting.

Rex v. Ribchester, 2 M. & Sel. 135. Removal from Ribchester to Church. Order quashed. Case:—The pauper, R. Salthouse, when about the age of seventeen, was bound apprentice by indenture, dated the 2d of November, 1790, to Messrs. Peel and Co. calico print-cutters, for six years; P. and Co. covenanted to pay the pauper 6*s.* weekly during the term. These indentures were executed by the pauper and his mother, but no evidence was given of their having been executed by P. and Co. The pauper during the first two years served P. and Co. and slept in Ribchester. After that period he was sent by his masters to work for them in Church, and he worked in the works of his masters in Church, and slept there, except on Saturday and Sunday nights, when he went to sleep at his mother's in Ribchester, and returned on the Monday. Eleven other apprentices left the works at Church on Saturday, and returned on Monday, which the masters knew, and it was the usual custom for the apprentices to do so. The pauper continued to work and sleep in this manner for two years longer, when he entered into an agreement with Walmley, of Ribchester, for five meals in each week; and he accordingly went every Saturday night to Walmley's house in Ribchester, and returned to the works in Church, and slept there, except upon the Saturday and Sunday nights as before. The pauper continued to reside and sleep in the manner last mentioned for a quarter of a year, until the Saturday before Shrove Tuesday, 1795, when he received his pay, and never returned again to the service of his masters, having on the night before this Saturday slept in the works at Church. The pauper, when asked whether when he quitted the works on the Saturday he had determined not to return again, said, that he could not say that he did determine not to return, but that it seemed he did not return. When asked whether on quitting Messrs. Peel's works in Church for the last time on the Saturday afternoon he had formed any intention not to return, he answered that he had not; being asked the question as to Sunday, he made the same answer; and further said, that he

could not fix upon any particular point of time when he determined not to return. The pauper slept at Walmley's in Ribchester on the Saturday night, and for the whole of the succeeding week, and then hired himself into another employment. Lord *Ellenborough*, C. J. "This is a case in which there was not any express leave of absence given by the masters, but they had been in the habit of receiving back their apprentices after they had gone home and returned, and by so receiving them they showed that it was not their purpose to renounce them on that account. In pursuance of this indulgence the pauper went as usual on the Saturday night, and it does not appear what his intention was at that time, or that he had formed any upon the subject either of returning or staying away. He did not, however, return on the Monday; the end and conclusion, therefore, gives a character and denomination to the original act of departure, *finis nomen operi imponit*. From what was finally done we must collect what was his determination when he first went away on the Saturday. We find that he did not return, and that he did not on this occasion, as formerly, avail himself of the absence from Saturday to Monday as an indulgence. In *Rex v. Stratford-upon-Avon* (*infra*), the apprentice continued to perform a species of service with his master while he lodged with his mother, which was a circumstance to cover what might otherwise have been an interruption of the service; it was therefore held that he gained a settlement where he lodged. But here it appears that the apprentice by not returning to his service on the Monday, had not left it on the Saturday under the usual indulgence; and therefore he must be considered as having broken the contract on the Saturday when he quitted his masters' works; and consequently Friday night was the last night of his residence as an apprentice. The settlement therefore was at Church, where he slept on that night, and not at Ribchester." Bayley, J. "It is almost impossible to say that this apprentice was serving under the indentures of apprenticeship after the afternoon of the Saturday, when he received his pay and never afterwards returned. The court cannot look to what was passing in the mind of the apprentice, but to his acts. From the nature of the service he was only employed locally at the manufactory during the ordinary working days; but from Saturday to Monday he was free from his master. If then he was to have that interval entirely to himself, and never returned after its expiration, at what time did he leave his master's service? It must be taken that he left it at the time that interval commenced, for he was not in a condition to do any act of service for his master after the Saturday afternoon." Dampier, J. "*Rex v. Undermilbeck* (5 T. R. 387), is the only case like the present; but in that case the master recognized the departure of the servant, for he paid him his wages for the time of his absence. That, therefore, affords a distinction. Here the apprentice was at weekly wages, and was paid on the Saturday; and the Friday night was the last night of his being in the actual service of his masters under the indentures."

Rex v. Stratford-upon-Avon, 11 East, 176. Removal from Stratford-upon-Avon to Old Stratford quashed. Case:—The pauper, T. Barnett, was bound apprentice by the parish of Old Stratford to H. H., of Stratford-upon-Avon, cordwainer. There was a covenant for the pauper "faithfully to serve his master in all lawful business." He lived with his master twelve months, and then, his thumb being affected with *scrofula*, he left his master, and went to his mother's, in the adjoining parish of Old Stratford, where he continued till his master went away from Stratford-upon-Avon, which was about two months afterwards. He slept at his mother's house more than forty days, and he never afterwards slept in Stratford-upon-Avon, nor in any other place, for forty days, during the apprenticeship. During the time he so slept at his mother's he went almost every day to his master's, and was on some days employed for three or four hours in each day by his master in errands, and was always ready at his master's house whenever wanted by him, but was unable to work at his trade in consequence of the complaint in his thumb. Per Lord *Ellenborough*, C. J. "The facts stated leave no doubt that there was a service of the master by the apprentice while he lodged at his mother's in the adjoining parish. He went to lodge there, indeed, in

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Where an apprentice sleeps in another parish on account of illness, and while there is occasionally employed by his master, he gains a settlement by forty days' residence in that parish.

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order to get cured, in consequence of an arrangement between the master and the mother; but he continued to serve his master every day; and though he could not work at the trade himself, yet he performed other service, and he might attend the work and learn the trade of his master; he must, therefore, be considered as still in the service of his master as an apprentice while he lodged with his mother. If the mother had lived more remote from the master's house, so that he could not have served his master while he resided at his mother's for the purpose of cure, that would have altered the case, and likened it to *Rex v. Barmby in the Marsh* (*ante*, 534); there was no service of the master; but here, the service to the master continued, and therefore the apprentice gained a settlement by the last forty days' residence in the parish where he lodged with his mother." *Le Blanc, J.* "The question is whether he was resident at his mother's as an apprentice. The facts put an end to the argument, for during all the time he was serving his master, not to the extent required by the indenture, but to the extent of his ability. In the case where the apprentice gained no settlement, whilst resident in a different parish from his master for the purpose of cure, he was not serving his master during such residence. While an apprentice continues serving, all the cases agree his settlement is in the parish where he lodges, and not where the service is performed."

A parish apprentice and his master were both on the permanent staff of the local militia, in consequence of which they resided together in the parish of B. for forty days, where the apprentice also served his master: The court of K. B. held that this residence was sufficient to give a settlement, notwithstanding they were both under the control of their superior officers during the whole time.

Rex v. Chelmsford, 3 B. & A. 411. Removal from Braintree to Chelmsford. Order confirmed. Case:—The pauper was bound a parish apprentice to S. Spurgeon, of Halstead, to learn the art of a cordwainer, and to serve him until the pauper should attain the age of twenty-one. The pauper served the first four years in Halstead, when the master and the pauper went to Chelmsford, and the pauper served his master there for nearly a year. When about two years of the apprenticeship were unexpired, the master and apprentice having been appointed on the permanent staff of the Essex local militia, of which the head-quarters were at Braintree, went from Chelmsford to reside there. The master had been appointed a serjeant; and the apprentice, a drummer, served the master, and inhabited forty days in Braintree. The pauper received his soldier's pay whilst working for his master at Braintree, but not full wages; and the master refused to give up the indentures till the expiration of the term expressed therein. *Abbott, C. J.* "I am of opinion that the pauper gained a settlement by his residence in Braintree. It is not necessary for the court to consider what would have been the effect, if the residence had been separate from that of his master, in consequence of his being in the local militia. Here he continued to reside in the same place with his master, and continued to serve him during the whole period. That is expressly stated as a fact by the sessions; and it is not impossible that, during a great part of the time, he might be actually serving his master. It is not necessary that the party should reside in a place because he is an apprentice, so as to give him a settlement there; for *Rex v. Stratford-upon-Avon* (*ante*, 541), is a distinct authority to the contrary." *Bayley, J.* "The best rule is to abide by the words of the statute. Those are, 'If any person shall be bound an apprentice and inhabit, such binding and inhabitation shall give a settlement.' Now here was a valid binding, and the pauper resided where his master was at the time, and continued to do acts of service whilst so resident. His residence was, therefore, not wholly foreign to the purposes of the indenture, and sufficient to confer a settlement." *Holroyd, J.* "I see nothing to show that the obligation to serve under the indenture was put an end to. His service might lawfully continue, and, in fact, did continue during all this time. It is said that the ground of his residence was because he was a soldier; and so in *Stratford-upon-Avon* the residence was in order that he might be cured of sickness. Yet as he continued to do service for his master, notwithstanding his sickness, the residence conferred a settlement. That case governs the present." Order of sessions quashed.

Residence of seafaring persons.

St. Mary, Colechurch, v. Radcliffe, 1 Stra. 60. Removal to St. Mary, and order quashed. A boy was bound apprentice to a sea-faring man, and served him for a quarter of a year in the day time on land in St. Mary, Colechurch, but lay every night on shipboard in Radcliffe. This was likened to

the case of the cobbler. By *Parker, C. J.* "A man properly inhabits where he lies; as where the house is in two leets, he is to be summoned to that in which his bed is."

Rex v. Burton Bradstock, Burr. S. C. 531. Removal from Bothenhamp-ton to Burton Bradstock. The pauper was bound in March 28, 1754, to J. Miller, of Bridport, owner of a ship, an apprentice, and to learn navigation, and the art of a sailor, and immediately he entered on board the ship, and did there serve John Miller for seven years as an apprentice. The ship was during that time employed in a coasting trade from Bridport harbour to other ports, and that harbour was considered by the captain and sailors as the ship's proper home. During that time the ship was often in the harbour, but never for more than a month at a time. On December 7, 1760, she arrived, and continued there till January 22, 1761, being more than forty days; the apprentice, during those forty days, lodging, boarding, and serving his master on board the ship: and the ship was never in any other port forty days after that. On March 11, 1761, the ship returned to Bridport, and there remained till after the 28th of that month, on which day the apprenticeship expired: and during that time the pauper lodged, boarded, and served on board the ship as before. Bridport harbour is a basin within the parish of Burton Bradstock, and communicates with the sea by a cut made from it to the sea, and through this cut ships enter. *Per Lord Mansfield, C. J.* "Lybng in a parish is the same whether it be on board a ship or on land. Casual residences, or accidental inhabitances, are out of the present case. The harbour is stated to be within Burton Bradstock, and the service was *bonâ fide* performed there. *Yates, J.* said, "That this was not like the case of a vagabond strolling from parish to parish." *Aston, J.* said, "He thought mere watching on board a ship was not a residence within 3 & 4 W. & M. c. 11. Nor would a vessel in transitu, accidentally stopping at a port to repair a leak, or any such casual occasion, gain a settlement to the sailors on board; but this was the proper home of the ship." [See, however, the following case.]

Rex v. Topsham, 7 East, 466; 1 Bott, 722. The pauper, when twelve years of age, was bound apprentice as a mariner to D. S., of Topsham, ship-owner and coal-merchant. He served his master for three years, during which he made several voyages, and returned to Topsham, residing there in the intervals between the voyages, sometimes for two months. His last voyage was in the *Reward of Topsham*, which sailed to Shields, and from thence to Poole, with a cargo of coals. The pauper remained at P. upwards of forty days, and slept every night during that time on board the vessel, alongside the quay. He knew whilst there that his master was become a bankrupt, and gone from Topsham; in consequence of which he applied to Mr. Penny, the agent and consignee of the vessel, for money, to enable him to return to Topsham, who supplied him with half a guinea for that purpose. On his arrival at Topsham he resided with his uncle, not being able to find his master, whom he had never seen or served since. It was contended that the residence at Poole was accidental; that in *Rex v. Burton Bradstock (supra)*, the fact relied on was that Bridport harbour was the home of the ship; that the pauper's return to Topsham, by the assistance of his master's agent, and his subsequent continuance there, fixed his settlement in that parish. But the court agreed, that the residence at P. was not casual, but that he was there in the actual employ of his master in his trade, which in its nature required a shifting residence. That the principal doubt in *Rex v. Burton Bradstock* was, whether the residence of an apprentice on ship-board were equivalent to a residence on shore in the same parish, and what was thrown out there in respect of Bridport harbour being the home of the ship, was principally in answer to that objection. And that the doctrine of casual residence, as applied to places of public resort, which had been thrown out in the Scarborough case, had been pretty much shaken in *Rex v. Bath Easton*. That at any rate, however, the doctrine did not apply to a case like the present, where the apprentice was in the actual service of his master at the time. And that it was clear an apprentice might gain a settlement by

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If an apprentice to a ship-owner resides in a port more than forty days in the course of his trade, he gains a settlement there, though his master in the meantime absconds from home.

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An apprentice not being wanted went back to school, and resided there: Held, that this was not a residence under the indenture.

serving his master in another parish, where his master's business called him. That it appeared also by the case that the apprentice never returned to his master's service in Topsham, for his master had absconded before his return, and he went to his uncle; and it is expressly found that he never saw or served his master afterwards." Order of sessions quashed.

Rex v. Saint Mary Breeding, Canterbury, 2 B. & Ald. 382. A master-mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or to let him go back to school, and the apprentice said he would go back to school and learn navigation; he did so, and resided above forty days there: the master paid no part of the expense of the school, nor gave him any wages. He never returned to the ship or his master. *Bayley, J.* said, "This is a case new in its circumstances, and we are called upon now to lay down a rule which is to govern in future. It has been truly stated that the words of the statute are only 'such binding and inhabitation.' But I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort. This service must either actually or constructively be going on during the absence of the apprentice from his master; and the cases say, that where the absence is occasioned by illness, which negatives the existence of such service, no settlement is gained by such a residence, nor had the master any control over the apprentice during this period. This case is like that of a master who allows his apprentice to return to his friends, having no occasion for his service. That is a suspension of the apprenticeship for the time, and no settlement can be gained by such residence. Here the service did not continue while the apprentice was at school."

The indenture stipulated that the master should provide meat, &c., during the term, except in the winter, when the ship to which the apprentice belonged should be laid by unrigged; at which time the apprentice was maintained by himself or friends, the master paying a compensation. The apprentice accordingly during the winter, resided with his parents in the township of B. for more than forty days, doing no work for his master: Held, not a residence under the indentures and conferred no settlement.

Rex v. Brotton, 4 B. & Ald. 84. Removal from Whitby to Brotton. Order confirmed. Case:—The pauper, S. Marshall, was bound apprentice for four years, by indenture of 11th of March, 1813, made between S. Marshall, the elder, and S. Marshall, the younger, of the one part, and Addison Brown, ship owner, of the other part. The master was to provide for his apprentice meat, washing, and lodging during the term, *except in the winter seasons, when the ship to which he should belong should be laid by unrigged, during which time it was agreed that the apprentice should maintain himself, or be maintained by his friends,* and in lieu thereof, the master should pay the apprentice 6s. a week, during such time as the apprentice should not be maintained by his master, and the master should pay the apprentice for wages 75*l.*, in certain yearly proportions. The pauper, while the ship was laid up at Whitby, in which he served his master as an apprentice, resided occasionally during the winter with his parents in Brotton, and in the whole for more than forty days, and he slept the last night of the apprenticeship at Brotton. Brotton is twenty miles from Whitby; and the pauper did not do any work for his master while he resided there, but was liable to have been recalled by his master at any time, if he had been wanted at the ship. *Abbott, C. J.* "This appears to me to be a stronger case than the one which has been cited (*Rex v. St. Mary, Breeding, supra*), and that on the very ground on which it has been attempted to be distinguished from it. Here there was a distinct stipulation in the indenture, by which the master dispensed with the service of his apprentice during the winter season, the period when this residence at Brotton took place. The residence, therefore, is not at all connected with a service; but is by the very words of the indenture disconnected from it. Then the case cited is an express authority to show that an apprentice, by such a residence, does not acquire a settlement."

Casual residence. Where an apprentice, at his master's desire, left the parish in which his master lived, returns and sleeps in that parish without his master's knowledge, it is not a

Rex v. Smarden, 13 East, 453. Removal of R. Gilbert, from Great Chart to Smarden, confirmed. Case:—On the 28th November, 1795, the pauper was bound to J. Gurr, of Smarden, shoemaker, as an apprentice for seven years; only one deed was executed, which, by consent, was deposited with Mr. Large, for the benefit of both parties. The pauper served and lived with his master in Smarden till within four months of the end of his term, when his master agreed with one Olloway, of Hedcom, shoemaker, that the pauper should go to work for him during the remainder of his ap-

prenticeship. O. was to board and lodge the pauper, and to pay Gurr 3s. weekly for his services. This agreement was made by Gurr without consulting the pauper. No part of the 3s. was reserved for the benefit of the apprentice. The pauper worked with O. in H. till within three weeks of the end of his apprenticeship, boarding and sleeping at O.'s house in H. during the whole time. At this period, as the pauper was told by O., the parish officer of H. called on O., and in consequence of a conversation between the officer and O., which was not heard by the pauper, O. told the pauper that he did not wish to affront the parish, and that he, the pauper, must therefore leave him and seek work elsewhere. The pauper left O. on that day, and went to Smarden, where he slept, but did not return to Gurr, nor had he any intention of doing so, as Gurr had not used him well, and he knew Gurr had no work to employ him upon. Gurr did not see the pauper on the night of his sleeping at Smarden, nor did it appear that he was acquainted with the pauper's being there. The pauper went the following day to Great Chart, where he continued to work for his own maintenance until the expiration of his apprenticeship; when that day arrived, he returned to Smarden, and his master and he went to the person who had the indenture. Lord *Ellenborough*, C. J. (after stating the facts): "Upon dismissal, in consequence of the interference of the parish officers, the apprentice returned to Smarden for one night, but not to his master, nor into his service, not having any intention so to do, but merely to get a bed there, as he would have done any where else. Then can this be called a returning into the service of the first master, who was even ignorant of the fact of the pauper's being there? But it is said that the master afterwards recognised the continuance of the relation between them at that time, by going with the pauper, when the term of apprenticeship expired, to take up the indenture; but how can that vary the question whether the pauper returned into his services on the night when he slept in Smarden, against the conclusion to be drawn from all the other facts of the case? There being then no residence of the pauper in Smarden under the indenture for any part of the last forty days of the apprenticeship, except by coupling the night when he slept there on his return from Hedcom with his previous residence in Smarden, and that having been a mere *casual* residence, and not under the indenture, the settlement acquired in H. continued there."

Rex v. Iddesleigh, 4 D. & R. 332; 2 D. & R. Mag. Ca. 245. The pauper's indenture as a parish apprentice expired 24th June, 1813. He resided in Iddesleigh with his master till Lady-day, 1813, when he left him, and agreed with Thomas Weeks, of Dowland, to serve him for a month, at 2s. 6d. per week. After this agreement, and before the pauper went into Weeks's service, Arnold saw Weeks, and consented to the pauper's service with him; and the pauper then went for the first time to reside with Weeks. At the expiration of the first month, the pauper agreed for a second month, at 3s. 6d. a week, and continued to work with Weeks at the same wages, and to reside at Dowland till the 7th June, when he left Weeks in consequence of being called out to serve in the local militia in a third parish. Having served a fortnight in the militia, he returned, on the 21st June, to Weeks, and agreed to serve him in the same capacity as before at 6d. a-day; and while in Weeks's service, from the 21st June, including that day, the pauper slept continually for two or three months at his mother's in Iddesleigh. *Marryatt* urged that this was like *Rex v. Smarden* (*ante*, 544). [*Abbott*, C. J. "That case is distinguishable from the present in two particulars; first, the second service was entered upon with the consent of the first master; and second, the fact of the apprentice sleeping one night in the parish of the first master was unknown to him, and was a casual act, not done with the intention of resuming the service under the indenture."] *Marryatt* then said, "there is a general consent of the first master here to the pauper's entering into the second service, and that is sufficient." [*Abbott*, C. J. "Still the pauper sleeping the last three nights of his term in Iddesleigh removes the settlement to that parish, because he was then serving under the indenture."] After further argument, *Abbott*, C. J., said, "The pauper had agreed to serve Weeks in

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residence under the indenture.

A pauper slept the last three nights of his apprenticeship in the parish of his original master, with the knowledge of the second master, but unknown to his original master. He gained a settlement.

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Dowland for a month, at 2s. 6d. per week. The latter communicated this circumstance to the former master, who consents to the service, and for that purpose the pauper goes into, and resides in the appellant parish under that contract. At the expiration of that month, the pauper was at liberty to quit, and Weeks was at liberty to part with him. Then they agreed for another month, at 3s. 6d. per week, and the pauper remains in Dowland parish until he goes into the militia. At the end of a fortnight he returns to Weeks, and enters into a third agreement at 6d. a day; but it does not appear that the agreement was for any specific length of time. The sessions seem to have been of opinion that there was either a consent of the former master, specially or generally, for the pauper to serve Weeks. If it was a special consent, then it must be a consent to the terms of service for which the parties had agreed previously to the return of the pauper to Weeks' service; and if it be so considered, then there would be only one service, with the assent of the original master. But on the other hand, if it was a general assent that the pauper should serve Weeks during the remainder of the term, then, though the service during the last three days was in Dowland, still that would not confer a settlement, for during the nights of those three days he slept in Iddesleigh, and therefore whatever view is taken of the case, whether we consider it as a special or general assent, it seems to me that no settlement was gained in Dowland." *Bayley, J.* "I think the sessions did right in forming the conclusion to which they came. It was for them to decide whether the first consent was general or definite. On whatever ground they decided, their decision is correct, the pauper having slept during the last three nights in Iddesleigh. It is said that the sleeping must be connected with the service. To that I accede; but it must be a sleeping in the parish in which the service is. It has been decided over and over again in the case of a hired servant, that sleeping the last night in the parish in which the pauper is hired will determine the settlement, though there is no work done in that parish. Though the pauper in this case slept the last three nights in Iddesleigh without the first master's knowledge, that will make no difference." *Holroyd and Littledale, Js., concurred.*

12. *Of Serving different Masters.*

12. OF SERVING DIFFERENT MASTERS. (a)

It is not necessary that the apprentice should serve out the term with the same master to whom he was bound. He may gain a settlement under the indenture, although the master relinquishes his right over his service for a time, to be resumed at a future day, or permanently for the whole remaining period of the apprenticeship.

It has been observed, that much subtlety and refinement has been introduced into this particular branch of settlement law; and Lord *Tenterden* (2 D. & R. 845; 1 D. & R. Mag. Ca. 452,) is reported to have said, in *Rex v. Whitchurch*, that it was time that some plain and broad rule should be adopted; and that he then added, "there must be an express consent on the part of the first master, to which the second must be privy, and an employment by the latter of the servant in the same capacity." (See 1 B. & C. 574, S.C.)

It will be found that several of the following cases cannot be reconciled with this principle, and particularly that in *Rex v. Banbury* it was observed that the rule, that the second master must be privy to the facts of the apprenticeship, is much shaken, if not altogether decried.

It is also to be observed that the original master cannot give his consent, unless the indentures continue in force, therefore it is important to see what amounts to a dissolution of the apprenticeship. (See *post*, 561.)

There are certain conditions, however, to be observed in this transfer of the apprentice, the nature of which will appear more clearly by arranging the cases upon the subject according to the following divisions:—

1. *There must be an express Consent to the transfer of the Service; mere knowledge is not sufficient.*

(a) See division of this subject, *ante*, 451.

2. By whom the Consent to the Change of Master may be given.
3. The Consent may be given either by Parol, or by Assignment of the Indenture.
4. Cases in which it has been held that the Second Master must be privy to the Consent.
5. The Apprentice must be employed in the capacity of an Apprentice, under the original Indenture.

12. Of Serving different Masters.

1. There must be an express Consent to the Transfer of the Service; mere Knowledge is not sufficient.

St. Olave's v. All Hallows, Sett. & Rem. 153; 1 Stra. 554. A person is bound apprentice to a master who lives in St. Olave's. Afterwards, the apprentice, by his master's verbal consent, lived with and served another person in All Hallows. By the court: "He gains a settlement in the last place; for a person may serve his master in another parish or place: and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master."

Rex v. St. George's, Hanover Square, 2 Sess. Ca. 138; 2 Stra. 1001. A. Wheeler was bound a parish apprentice to G. Leicester in St. George's, where she lived above forty days. Afterwards she was by parol agreement hired out by her master to Hall in St. Mary-le-Bone, and there lived for one year and upwards, the apprenticeship continuing; Leicester received her wages, and found her clothes. By the court: "The apprentice is well settled in St. Mary-le-Bone."

Rex v. Fremington, Burr. S. C. 416; 2 Bott, 560. M. Bevans, the pauper, was bound a parish apprentice to one Richards, in Fremington, who, after some time, declared that he had no business for her, and gave her permission to go and work elsewhere, where she would, for her own benefit; and on his recommendation she was hired to one Mr. Nott, at Sherwell, from the first day of June till Lady-day, and served him there for the wages of 32s.; and then went back to her master, with whom she stayed eight days, and then her apprenticeship expired. This was held to be a good settlement at Sherwell, for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person for her own benefit. She did so, and afterwards she returned to her master, and was received by him, and stayed with him to the end of her term. And, consequently, the service with Nott was a continuation of the apprenticeship, and performed under it.

Rex v. Ideford, Burr. S. C. 821; 2 Bott, 413. Mary Street, the pauper, was bound apprentice by the parish of Chudleigh to Philip Matthews of that place, till twenty-one, or day of marriage, and lived with him there four years, when he assigned her by parol to J. Stelliford of Ideford, with whom she lived seven months, when she ran away from Stelliford and returned to Chudleigh, and resided there for nine months as a servant to John Hayes, at a public house, with the knowledge, but without any express consent, of Matthews or Stelliford; and John Hayes did not know that the pauper was an apprentice. Matthews resided in Chudleigh during the time that the pauper lived with Hayes, and frequently saw her there, and applied to Stelliford to take her back to Ideford, and threatened to put him to trouble if he did not. During the time that she was at Chudleigh, she was taken ill, and part of the time so ill in the workhouse, that she could not be removed, and was there relieved by Stelliford. She never returned to Ideford; but continued for the last two years of her apprenticeship in Chudleigh in good health, where the apprenticeship expired. It was argued, that the pauper's service at Chudleigh, after her return from Ideford, was a service under the apprenticeship, being by consent of her master, Stelliford, who manifestly considered her as his apprentice whilst she resided there. Lord Mansfield, C. J. "Here is no consent of the master, either express or implied; his mere knowledge of it doth not imply his consent." And the whole court were unanimous that the pauper obtained no settlement at Chudleigh, after her return from Ideford.

1. There must be an express Consent to the Transfer of the Service; mere Knowledge is not sufficient.

An apprentice, who, by a verbal consent of his original master, serves another, gains a settlement by such service.

The pauper was hired to a second by the recommendation of her first master, to whom she returned for the last eight days: Held, this was a service under the apprenticeship.

After a parol assignment of a parish apprentice, and part service under that assignment, the apprentice ran away from her second master, and lived with a third nine months in the original parish, without the consent of her former master, and remained afterwards two years in that parish in good health, and the indentures then expired: Held, that no settlement was gained at such original parish.

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Apprentice to a freeman in Colchester worked for whom he chose, and sometimes for his master: Held, not a service under the indentures.

An apprentice offered his master a guinea to "let him off;" to which the master agreed, and also to give him a suit of clothes when the guinea was paid; but the indentures were not given up or cancelled. The guinea not being paid, the indentures still subsisted in law, and a settlement was gained by serving another master with the consent of the first.

Express consent given to the second master

Rex v. Inman, 4 B. & Ald. 55. *Quo warranto* for exercising the franchise of a burgess in Colchester. The custom was, that every person who served an apprenticeship by indenture for seven years to a burgess was entitled to the franchise. The boy was regularly bound, and served his master five or six years, living in his house. His master's business falling off, he then went to reside with his mother, during which time his master permitted him to work for whom he chose, he having agreed to pay his master 2s. a-week. His master occasionally gave him work to do, for which he was not paid. During all this time the indentures remained with the master. *Abbott, C. J.* "It is quite clear that to entitle this party to his freedom, there must not only be a continuance of the binding under the indentures to a free burgess, but also a continuance of the service under the indentures to a free burgess during the whole period of seven years. I am of opinion that the service under the indentures to the first master did not continue so long, and the consequence is, that the party is not entitled to his freedom."

Rex v. Shebbear, 1 East, 13. John Bassett was removed from Shebbear to Bradford. Order quashed. Case:—The pauper was bound at seven years of age, by a parish indenture, to Trick of Bradford, till the age of twenty-four. Trick assigned the apprentice to J. Sleeman, with whom he lived till Lady-day, 1780, within two months of the expiration of the apprenticeship. He then proposed to Sleeman to let him off the remainder, which he at first refused to do. The pauper then offered to give Sleeman a guinea if he would let him off, which Sleeman agreed to do, and to give him a new suit of clothes when the guinea was paid; the guinea was not paid to Sleeman, nor did Sleeman give the pauper the clothes: nor were the indentures given up or cancelled. On the Lady-day the pauper offered to serve Brent, who refused to employ him, conceiving him to be an apprentice. The same day he went to Battishill, a blacksmith in Shebbear, who said he would not take him without Sleeman's consent. The pauper went to Sleeman and told him what Battishill said; Sleeman replied, "*You may go with all my heart. I think it will be a good thing for you to learn the trade.*" On his telling Battishill what Sleeman had said, Battishill agreed with him; and he lived with him in Shebbear for the last forty days before he attained the age of twenty-four. *Lord Kenyon, C. J.* "This case is very distinguishable from *Rex v. Crediton*, (post, 549) which we decided a few days ago: and upon the same ground on which we there held that no settlement had been gained as an apprentice by the subsequent service, I think it as clear that the sessions have drawn the right conclusion in this case, in adjudging that a settlement was gained by the service with the second master. There is no doubt but that the indentures still subsisted in point of law, not having been delivered up or cancelled, nor any consideration paid for doing so. In the former case we were satisfied that the master did not really mean to give a particular assent to the second service; he had there told the apprentice to go where he pleased, having no further occasion for him, and when the apprentice told him where he was going, he answered that he might go there or any where else. But here the master was applied to for his consent to the particular person named; and he expressed his approbation of the apprentice going there, telling him that it would be advantageous to him to learn the trade. This, then, was not an indiscriminate leave to serve any person, but a particular consent to a particular service; and this is the plain line of distinction between all the cases, which, it is to be hoped, will make an end of all such questions in future. Perhaps it would have been more correct for the sessions to have found the fact of such particular consent, instead of only finding the evidence of it, as they have done; and if any thing were likely to turn upon it in this case, it should be sent down to them again to find that fact. But I do not know what advantage could accrue from thence to the respondents, for in effect the sessions have drawn that conclusion, and upon these premises I do not see how they could have drawn any other."

Rex v. Bradstone, 2 Bott, 573. Removal of the pauper from Llandulph to Bradstone. Order confirmed. Case:—The pauper was bound appren-

tice by the parish of Petherwynn to Mr. Lawrence of Launceston. Lawrence duly assigned him by indenture to W. Weeks, of Bradstone, with whom he continued till he was twenty years of age. At this period, Weeks and the pauper having some dispute, agreed to part, and W. gave the pauper a permission in writing, signifying that he was at liberty and had his consent to serve any other master. The pauper then left Weeks, and hired himself to R. T. of Beerferris for one year. He served the year and received his wages, and then married, and went to live in Llandulph, where he has since resided. During the time that he lived in Beerferris with R. T., he frequently saw W., who knew that he was in the service of T.; but W. had never given any particular consent to this service with T., or to his serving any particular person, but he told him at parting he would think no more of him. It also appeared on the examination of T., that the pauper had hired himself to him for one year for 6*l.* 10*s.* per year, and served out his year; that he was then twenty-one years of age, and the time of his apprenticeship not expired; that when the pauper had been in his service eight months, he (T.) met W. by accident, who said, "*I find you have an apprentice of mine;*" to which T. answered, "*I do not know I have;*" and that Weeks then said, "*J. Dingle is my apprentice, but you are welcome to keep him as long as you please, for I shall think no more of him.*" The pauper continued in his service with T. four months after this conversation had passed, and at the expiration of his year he received the full year's wages. The court, without argument, were of opinion that this conversation was a sufficient consent on the part of W. to the service of his apprentice with T. under the indentures.

Rex v. St. Mary, Lambeth, Cald. 533; 2 *Bott*, 419. The pauper was bound apprentice by indenture for five years to J. Cooke, of St. Botolph, with whom she continued a year and a half, when having staid out all night, on her return, Cook and his wife told her she was no longer their apprentice, and might go and look for another place, and gave her money to go to a register office to look for a place. After this she continued a week with her master, when hearing of a place, she agreed to hire herself as a servant to Mr. Harvey, of St. Saviour's, at 40*s.* a-year. Mr. H. came to Cooke and inquired her character, which turning out satisfactory, he hired her on the above terms: in this service she continued to live nine months in St. S. The pauper at this time was under twenty-one years of age; but when she left Mr. C. the indentures were not delivered up nor cancelled, but Mrs. C. told her the indentures were destroyed; this was not true as to both parts, one of them having been read in evidence. The pauper went afterwards to a friend's house at Lambeth, where she lived on charity; from thence she hired herself as a yearly servant to Mr. L. of Walbrook, without the knowledge of Cooke, where she lived three months. During this service she visited Mrs. C., her first mistress, and acquainted her where she was, who said she was glad of it. The removal was to St. Saviour's, Southwark. Lord *Mansfield*, C. J. "The indentures still subsist, and the power over the servant continues: then the question is whether the master consented? The character was *as servant.*" *Buller*, J. (a) "*Rex v. Ideford (ante, 547)* is directly in point." Order of sessions quashed.

Rex v. Crediton, 1 *East*, 59. W. Milton, &c., was removed from North Tawton to Crediton. Order confirmed. Case:—The pauper was bound apprentice to Andrew Matthews, whom he served above forty days in Crediton. Matthews failing in business, told the pauper that he had no further employment for him, and he might go where he pleased. Afterwards, and before leaving his master, Haydon came to inform the pauper that Underhill, who wanted a boy, was in the neighbourhood, and that he should go to him. As the pauper was going out of the house, his master asked him where he was going? The pauper told him he was going down to Underhill. Matthews said, "*he might go there, or where he pleased.*" Thereupon

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with a general leave to the apprentice, is sufficient, though the consent were not given till the apprentice had been in his second service for some time, but more than forty days before he quitted it.

Giving a character to an apprentice is a constructive assent to his service with the party applying for it.

General leave is not sufficient, though the master knows in whose service the pauper is.

(a) In that case the court held there was no consent (*ante*, 547.)

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the pauper left Matthews's house, and went and hired himself and lived with Underhill above forty days in Sampford Courtenay, but no communication appeared to have taken place between Matthews and Underhill. The question submitted was, whether this were such an assent as enabled the apprentice to gain a settlement in Sampford Courtenay. *Rex v. Tavistock* (post, 552), was cited. Lord Kenyon, C. J. "The service with Underhill was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable, if they were to be decided again *de novo*; but we are to be governed by the general principle resulting from them, and not by particular expressions, which vary in every case: it would have been better perhaps to have confined the power of gaining a settlement to a service with the original master. *Rex v. St. George's, Hanover-square* (ante, 547), first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has issued such a train of decisions as it is difficult to follow; however, the general principle of them all is to be found in *Rex v. Austrey* (post, 569), where Lord Mansfield said, 'that in order to gain a settlement by the apprentice serving another master, there must be an express and implicit leave and consent given by the master to the particular service, so as to be considered as a service of his master under the indenture,' and not, as he observed in that case, 'a leave intended to be quite general;' or, as here, a general quitting of the service, and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased; and then, somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to Underhill; on which the master repeats in effect what he had before said, that he might go there or where he pleased, meaning that he no longer looked for his service, or took any concern how he disposed of himself." *Grose, J.* "There must be a particular consent of the original master to the service with another, in order to give a settlement. In *Rex v. The Holy Trinity in the Minories* (post, 561,) there was a particular recommendation to a particular service, which the court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law; and here the sessions have in effect negatived that fact, by finding that the pauper gained no settlement by the service with the second master." Order of sessions confirmed.

Where the master tells the apprentice he may do the best he can for himself, and afterwards, upon hearing from the second master that the apprentice had procured a place, expressed his satisfaction at it, it is not such a consent as will give a settlement.

Rex v. St. Helen, Stonegate, 1 East, 285. Removal from All Saints, Peaseholme, to St. Helen, Stonegate, confirmed. The pauper, on the 1st of January, 1786, was bound for seven years to T. Mawman, of Thirsk, bricklayer, with the consent of his brother, W. Chapman, his father and mother being then both dead. At the end of three years and a half the pauper ran away, and afterwards his master assigned him by parol to W. C., with whom he afterwards lodged for about three years, and during the last two years of that time he slept in St. Helen, Stonegate. About March, 1792, the pauper being about to marry, applied to W. C. and told him he wished to work and provide for himself; to which C. consented, and said *he might do the best he could for himself*; he did not afterwards consider him as his apprentice, but the indentures were neither given up nor cancelled, nor any thing said about them. In the same month the pauper applied to T. Penneystone (with whom the pauper and C. had worked together before) for work, who employed him and paid him weekly wages. About a month after, T. P. met W. C., and told him he had got his brother at work; to which W. C. replied, "*I am glad of it, he was a bad lad, and I could make nothing of him.*" The pauper continued to work for five months after this with T. P., and during the last three months of that time slept in St. John Delpike in York. The indenture was not given up by W. C. to the pauper till after the time expired. The court said that *Rex v. Crediton* (ante, 549) was expressly in point, and they confirmed the order of sessions.

A. is apprenticed to B. and C., partners. The

Rex v. St. Martin's, Exeter, 4 Nev. & M. 388; 1 Har. & W. 69, S. C. An order for the removal of John Snell and Ann his wife, from Puddington to St.

Martin's, Exeter, was confirmed, subject to the opinion of this court upon the following case:—8th February, 1807, Snell was bound apprentice for seven years to J. and W. Mildrum, linen-draper in St. Martin's. He resided in their house in that parish in service under his indenture fifteen months, when the partnership being dissolved, W. Mildrum left Exeter and set up business at Totness. Snell continued to serve and reside with J. Mildrum, who soon after entered into a new partnership with Procter. Some time after this, J. Mildrum and Procter having opened a linen-draper's shop at Tiverton also, J. Mildrum went to reside there with his family, but continued to carry on business with Procter in St. Martin's. Snell's usual place of residence and employment was still in St. Martin's, but he was frequently sent over to assist in the shop at Tiverton, where he sometimes remained one, two, or several nights in succession, and he slept more than forty nights in Tiverton before the death of J. Mildrum. When the shop at Tiverton had been opened nine months, J. Mildrum being taken ill, removed to Exeter and died. At the time of his death Snell was at Tiverton, having gone there a few days before. He remained there till the Sunday following, and then returned to Exeter, where having attended his master's funeral, he served in the shop as usual and slept on the premises. Shortly after the funeral Snell entered into an engagement with Procter, and he never afterwards resided with or had any communication with W. Mildrum. The question for the opinion of the court is whether Snell was last settled in Tiverton or St. Martin's. Lord Denman, C. J. "I think that we cannot say that Snell is settled in the parish of St. Martin's, Exeter. It is quite clear that, in order to make a residence by an apprentice with a second master a residence under the apprenticeship, it must be shown that the party to whom the apprentice was bound consented to the particular service of the apprentice with the second master. No consent is stated, and from the case submitted to us we cannot infer that fact. The sessions were at liberty to draw such an inference from the facts stated, but we cannot do so." *Littledale, J.* "I also am of opinion that no settlement was gained in St. Martin's. It is not necessary to consider the effect of the death of the master. Undoubtedly the cases have established that the executor of the master stands in his place, and it is competent to the executor to create a new contract by actual assignment or by word of mouth. But I do not think that the question as to the death of the master arises at all. The binding being to both, the apprentice continued, after the death of J. Mildrum, bound to W. Mildrum. The executor, therefore, of J. Mildrum had no right to interfere, and had no power to transfer the apprentice. If the apprentice had continued with Procter with the assent of W. Mildrum, that would have been a different thing. But W. Mildrum has in no way interfered, and appears not to have known any thing about the apprentice from the period of the dissolution of the partnership with his brother; it is the same thing as if the binding had originally been to W. Mildrum (*vide Co. Litt. 185 (a)*), and nothing had been said by him as to the service of the apprentice under the second master." *Williams, J.* "I am of the same opinion. The case does not warrant our inferring that the residence in St. Martin's subsequent to the death of the master was a residence under the indenture; and unless that fact appear the residence can confer no settlement. The cases which have been referred to do not apply." Order of sessions quashed.

2. By whom the Consent to the Change of Master may be given.

Rex v. East Bridgeford, Burr. S. C. 133; 2 Bott, 557. Thomas Alt was bound apprentice to William Henston, of Orston, webster, for nine years, and served him the first four years at O. H. then dying intestate and insolvent, his widow, without any administration taken out, assigned him over to Edward George, of Staunton, webster, a certificate man, for the remainder of

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partnership being dissolved, B. removes, and A. serves C. and C.'s new partner D. After the death of C., A. continues to serve D. It not being found by the sessions that the service under D. was with the consent of B., this court will not refer the service to the apprenticeship. No settlement is therefore gained by A. in the parish in which he served and resided with D.

2. By whom the Consent to the Change of Master may be given.

The consent of the widow of the master is sufficient, though she had not administered to her husband. (*a*)

(a) This case is recognised as an authority in *Rex v. Barleston* (*post*, 553).

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The pauper was bound for three years, and served forty days in W., when his master died, and being dismissed by the widow, who had not taken out administration, went and served his father in C. two or three years: His settlement was held to be in W.

An apprentice may continue to serve under an indenture by leave of the executor, and will gain a settlement thereby. (a)

A settlement is gained by a service with a third master, under the express consent of the second, to whom the first had assigned the apprentice.

the term, in consideration of 3*l*. He served George about a year and a half at S.; and then G., in consideration of 40*s*., did, with the consent of Alt, assign him over, by verbal agreement, to Baggaley, webster, for the remainder of the term; and he served the remainder of the term with B. at East Bridgeford. The removal was from O. to East B. The objection was, that the widow had not taken out letters of administration, and had no authority to make such assignment. The court were unanimous that this was a settlement in E. B. Since to this assignment, though only a verbal one, there was the consent of all the parties concerned, and he lived and inhabited at E. B. under the terms of the apprenticeship, as an apprentice bound according to the act of parliament. And they observed that an assignment of an apprentice is not considered a strictly legal transaction (because the person of a man is not strictly and legally assignable); but it has been an equitable construction, that where an apprentice has lived forty days under an assignment, he shall thereby gain a settlement, because of the *consent*.

Rex v. Chirk, Burr. S. C. 782; 2 Bott, 782. An apprentice, bound for three years, without any consideration, to a slater at Wrexham, served under the indenture for nine months: then his master died, and he continued a fortnight with the widow, to complete the work unfinished by his master. Then his mistress, having no employment for him, told him that he must not stay with her, and that he was at liberty to go where he thought proper. On his going away, he told his mistress that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, nor were the indentures delivered up. His father then lived in Chirk, and he continued with him there two or three years. The court held the settlement to be in Wrexham, for it sufficiently appears that the pauper served forty days as an apprentice in W., and that his settlement remained there. The widow doth not appear to have had any interest; and no administration appears to have been taken out.

Rex v. Stockland, Doug. 70. The pauper was bound apprentice by the parish of Stockland to John Davis till twenty-four years of age. He lived with him four years under the indenture, when his master died. He continued with his master's son, who was his executor, and had proved the will, for about seven years, when being desirous of living with his uncle in Otterton, to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave it. The pauper went to his uncle in Otterton, and continued there with him two years and a half, at the end of the first four months of which time the pauper attained his age of twenty-four. *Rex v. East Bridgeford (ante, 551,)* was relied on as having gone much farther than this, because there the assignment was by a person who had only the right to the administration, but had not administered. By Lord Mansfield, C. J. "Though an apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties and his own, it is a continuation of the apprenticeship. *Rex v. East Bridgeford* is much stronger than this."

Rex v. Tavistock, Burr. S. C. 578; 2 Bott, 412. The pauper was bound an apprentice by the parish of Lamerton to R. Rundle, with whom he lived several years; Rundle transferred him by assignment to J. Prout of Milton Abbot, with whom he lived till he was twenty years and a half old, at which time he offered his service to T. M. of Kelly. M. apprehending that he was an apprentice to P., sent his sons to P. to know whether it was with his consent that the pauper should live with him. To which P. answered, "With all my heart; he may live with M. or any body else, provided he performs his agreement with me." Accordingly he lived with M. in K. for a year

(a) But an apprenticeship is a personal trust, and is determined by the death of either master or apprentice, and therefore no assignee of an apprentice, after the death of the first master, can

give consent, unless he is an appointee within the meaning of 32 Geo. III. c. 57. (See *Rex v. Eakring* and *Rex v. Sheepsh-head, post, 571.*)

and upwards. Lord Mansfield, C. J. "The only question is, whether Prout consented? It is clear that he did consent, and his consent included that of the first master." *Aston, J.* said, "that a second assignment was good." (*Rex v. East Bridgeford, ante, 551; Rex v. Clapham, infra; and see Rex v. St. Martin's, Exeter, 4 Nev. & M. 388; 1 Har. & W. 69; and ante, 550.*)

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3. The Consent may be by Parol, or by Assignment of the Indenture.

St. Olave's v. All Hallows, 2 Sess. Ca. 215. If a master assign over his apprentice, and the apprentice serve in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serve with one master or another, for he still serves by virtue of the first indenture.

3. The Consent may be by Parol, or by Assignment of the Indenture.

Apprentice assigned.

Rex v. Clapham, Burr. S. C. 266; Bott, 559. Michael Wilson, the pauper, was bound a parish apprentice to T. J., of Austwick, tenant to Mr. Jackson of Clapham, who had covenanted to indemnify his tenant against all parish charges. T. J. carried him to his landlord together with the indenture, who accepted, received, and provided for him. He desired the mother to provide for the boy, who did so for three years in Austwick, and Jackson paid her 20s. a year. Then he lived with him in Clapham eight weeks, and then ran away to his mother, and remained a quarter of a year with her in Austwick, and Jackson consented to his being there. Then the pauper was placed with his brother, a mason in Austwick, as an apprentice, by Jackson, who gave him a new suit of clothes. And he served his brother as an apprentice, a twelvemonth or two in Austwick, who took him as an apprentice and quitted Jackson of him. But the representatives of the first master (who was then dead) knew nothing of this, or even assented to it, nor any thing of his living with his mother. By *Lee, C. J.* and the court: "The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This therefore must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with Jackson at Clapham, the settlement had been there. But a settlement is fixed at Austwick by the boy's living there a quarter of a year, with the consent of his master, and after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding."

If an apprentice be delivered to a second master, and by him placed with a third master, he gains a settlement

Rex v. Barleston, 5 B. & Ald. 780; 1 D. & R. Mag. Ca. 103. Removal from Heather to Barleston. Order confirmed. Case:—A settlement by apprenticeship under a parish indenture to J. Greasley, in the appellant parish, was proved. To show a subsequent settlement, a paper was proved purporting to be an assignment of the pauper, in February, 1812, by Greasley to T. Dalby. The pauper resided more than forty days in Leicester under that assignment; a premium of 5*l.* was paid by Greasley to the new master; it was the sum which Greasley had received with the pauper on the original binding. The assignment was executed by Greasley, Dalby, and the pauper, and after reciting that the apprentice had about eight years of his term unexpired, stated that Greasley did absolutely give, grant, assign, and set over unto Dalby, all term of years to come and service which Greasley had in pauper. Greasley covenanted with Dalby that the pauper should truly serve Dalby as his master, &c. Provided that Dalby should well entreat him, and learn him the craft of a frame-work knitter, and should allow him meat, &c. which Dalby agreed to do. *Abbott, C. J.* "We are of opinion that the pauper gained a settlement in Leicester. The assignment of the apprentice, and the service to his new master, were prior to the prohibitory stat. 56 Geo. III. c. 139, and therefore are not affected by it. The 32 Geo. III. c. 57, s. 7 (*ante, 465,*) is not a prohibitory but an enabling statute. Before that statute a master could not discharge himself from the obligation to maintain a parish apprentice by assigning him to another person, nor were the apprentice and

An invalid assignment under 32 Geo. 3, c. 57, s. 7, is sufficient to show the consent of the first master, and to render such service good as a service under the original indenture.

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The consent of the master implied from an assignment.

the new master subject to the ordinary jurisdiction of the justices with respect to masters and parish apprentices. This appears by the preamble to the section, and then the act proceeds with certain enactments, whereby, if the terms are complied with, these inconveniences are remedied. If the terms are not complied with, (and in the present instance they were not), the case is not within that statute; but it is to be considered with regard to the law as it stood before that act was passed. And so considered, although the assignment may be for many purposes inoperative, yet it manifests consent of the first master to a service with the second, and renders that service a service under the original binding. This is established by *Rex v. East Bridgeford* (*ante*, 551,) and *St. Petrox v. Stoke Fleming* (*post*, 560). In the first, the widow of the first master, without taking out administration to her husband, assigned the apprentice to George at Staunton, and George afterwards by parol assigned him to Baggaley at East Bridgeford; and it was held, that he gained a settlement by the service at East Bridgeford *by reason of the consent*. In the last of those cases the service under the original binding was in St. Petrox; and the first mistress indorsed the indenture, and delivered it up together with the interest in the apprentice to Foale, of Stoke Fleming, and the apprentice, by a new indenture, to which the mistress was not a party, voluntarily bound herself to Foale, and served him at Stoke Fleming, and the court held, that though an assignment of an apprentice (except by custom in London) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it would be good, for the purpose of conferring a settlement; *for the servitude continued under the first binding*. And these cases and some others determined upon the same principle appear to have been recognized by the court in *Rex v. Christowe* (*post*, 559), in which case the first master had not assigned the apprentice, but had taken upon himself to bind her out anew, with her consent, to another person, by a new indenture of apprenticeship; and the court on that account thought that the service to the second master could not be considered as a service under the original indenture." Order of sessions quashed.

Forty days' service under an unstamped assignment by a widow, not stated to be the executrix or administratrix of her husband, confers a settlement.

Rex v. Barnsley, 1 M. & S. 377. Order of removal of Robert Gill, &c. from Barnsley to Killinghall, discharged. Case:—John Gill, the father of the pauper, was bound apprentice on 1st December, 1764, to Thomas Harrison, in Clint, for seven years, and served five years, until his master died, when in consideration of three guineas paid by William Bradfield, he was assigned by Elizabeth (widow of Thomas Harrison), by an unstamped indorsement on the indenture, for the remainder of his term, in words to this effect: "April 14th, 1769. I, E. H., do assign over my apprentice, J. G., for the remainder of his apprenticeship, unto W. B. (Signed) E. H., W. B." No evidence was offered to show that E. H. was either the executrix or the administratrix of Thomas Harrison. J. G. served Bradfield as his apprentice, in Killinghall, till the expiration of his indenture. Lord Ellenborough, after adverting to the effect of the relief given (for which see S. C. *post*), said, "The assignment (which, it is admitted, was not at the time required to be stamped), is in its form an assignment by the widow, 'as my apprentice,' and at this distance of time we will presume, if necessary, that she was lawful executrix: or even if she were executrix of her own wrong, still according to *Rex v. East Bridgeford* (*ante*, 551), if the pauper lived forty days under that assignment, we should hold him settled in the parish: and one case is enough on such a subject." Bayley, J. said, "*St. Petrox v. Fleming* (*post*, 560), shows that similar assignments need not be by deed."

Where the master agreed in writing that the apprentice should serve his father for the residue of the term in consideration of 8s., this requires no stamp, as it is under the value of 20*l.* (*Rex v. Enderby*, 2 B. & Ad. 205.)

4. *The Second Master may be privy to the Consent.*

Consent to a particular service is not sufficient

4. *The Second Master may be privy to the Consent.*

Rex v. Ashby-de-la-Zouch, 1 B. & Ald. 116. Removal of Anne Sutton from Burton-upon-Trent to Ashby-de-la-Zouch. Order confirmed. Case:—By indenture, (June 16, 1804,) the pauper, being ten years of age, was bound ap-

prentice by the parish of Stretton-in-the-Fields until she was twenty-one, to Messrs. Pilkington and Webster, of Ashby-de-la-Zouch, cotton manufacturers, and continued to work with them in that parish until November, 1813, when they relinquished the manufactory, and gave up business, having at that time a considerable number of female parish apprentices, who wore a particular dress in their manufactory. Previously to their relinquishing the business, Webster went over to Peel, one of the partners in a cotton manufactory at Burton-upon-Trent, and proposed assigning to him the apprentices, but did not mention the names or number. Peel having agreed to take them, an application was made to two magistrates to get the assignment completed, but they objected that it could not be done without the consent of the parish officers. Webster then told Peel that he was willing to execute as far as he had promised, but nothing further could be done than the verbal agreement before made, which was, that he (Peel) should have all their apprentices. The pauper was at that time with Pilkington and Webster. About eighteen of these apprentices were sent in the care of a servant to Peel at different times; with some their indentures were sent over, with some they were not. Many did not go to Peel's, but went where they pleased, and procured places for themselves. After it was found that the parish apprentices could not be formally transferred, the mother of the pauper applied to Webster to have her discharged, as she wished to get her a place elsewhere, and she went home to her mother with Webster's consent, and with his permission to get a place where she pleased. When she had been at her mother's about five weeks, Webster called at her mother's house, and finding that she had not got into service, he recommended to the mother that she should take her to Peel's, where she could get employment. After she had been at home about two months, the pauper went over to Peel's with another girl; no other person accompanied them, and they were not in the dress of P. and W.'s manufactory, and their indentures were not taken with them. They were both hired *as servants* for fifty-one weeks by the clerk of Peel's works, who did not know that they were apprentices, and who told them at the time that they might come into the service; but if they did, they should be hired for only fifty-one weeks. Shortly afterwards Webster met the mother and asked if the pauper was gone to Peel's, and was pleased at hearing she was; and afterwards meeting the pauper, he asked her where she was, and on being told that she was at Peel's, he said that it was the best thing she could do. In October last, Webster being applied to by one of his apprentice girls, who was at Peel's, for her indentures, gave them to her, and at the same time sent to the pauper at Peel's her indentures, which were then expired, saying, "take them to Ann Sutton, for they are of no use to me." He also sent over at the same time the indentures of another girl who had been his apprentice. The pauper continued in the service of Peel until she was removed, in consequence of being then with child. The court were of opinion that the facts proved did not amount to any particular assent on the part of the original masters to the second service, and consequently that the relation of master and apprentice between Peel and the pauper never existed. Lord *Ellenborough*, C. J. said, during the argument, "If we do not take all jurisdiction from the sessions, their finding on this point must be conclusive. The new service was for fifty-one weeks, a different period from that for which the old service was to endure. It cannot therefore be considered as a continuance of the old service. It is a discrepant service in all its particulars." And afterwards added, "it has been expressly found by the sessions that this pauper was not an apprentice, and it appears to us most clearly that the prior service was not continued; for when the apprentice applied to come into the service, she was told that she should be hired only for fifty-one weeks, which shows that this was not a continuance of the old service. I think the facts of the case warrant the sessions in the conclusion at which they have arrived." *Bayley*, J. "It was for the sessions to draw the conclusion. They have concluded that the relation of master and apprentice did not exist, and I think they have drawn a right conclusion. The master to whom the pauper went to be hired *was never apprised of the relation of master and apprentice having subsisted*; he hired her as a servant, which constituted a new and different

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where the pauper is hired as a servant, and the second master did not know that the pauper was an apprentice.

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The apprentice asked leave to go into another service, without mentioning where. The mistress said that she was not against it. The apprentice then hired himself to A. B. for a year. He then returned to his mistress and told her what he had done, and she said that she was not against it: Held, there was not a particular assent of the mistress to that service, and that the service with A. B. was not as an apprentice, but as a servant under a contract of hiring.

relation: it seems to me, therefore, that the sessions were well warranted in drawing the conclusion, that the relation between these parties was not that of master and apprentice; and if it were not, then the service of the pauper could not confer a settlement." *Abbott, J.* "The sessions have drawn the only conclusion which persons of a sound understanding could have drawn from the facts stated." *Holroyd, J.* concurred.

Rex v. Whitchurch, 1 B. & C. 574; 2 D. & R. 845; 1 D. & R. Mag. Ca. 452. Joseph Pierce, &c., was removed from Drayton in Hales to Whitchurch. Order confirmed. Case:—The pauper, by indenture (7th April, 1798), was bound a parish apprentice, till twenty-one years of age, to Margaret Dutton, under which he served her, in Whitchurch, for six years, when the indenture having still three years to run, and the pauper not agreeing with Mrs. Dutton's foreman, asked his mistress leave to go into another service, to which she consented, saying, "she was not against it if he could better himself." He did not mention where he was going. The pauper went to Jenkinson's, and hired himself to him for a year at 3*l.* 16*s.* wages. He returned and told his mistress, who said, "Very well: she was not against it." In a few days he went to his new place, and in about a fortnight returned to his old mistress for his clothes, who said, "she hoped he liked his new place;" and he said "he did." Under these circumstances he lived with Jenkinson, in Rees, three months. *Rex v. Crediton* (*ante*, 549) was cited, and *Rex v. Shebbear*, (*ante*, 548). *Abbott, C. J.* "There the new master took the pauper as the apprentice of the former master." *Per curiam*: "The question in this case is, whether the service with Jenkinson was a service under the indenture. It is clear that the justices have thought that it was not; because they have confirmed the order. They have not said so in express terms, for then there could be no argument upon the subject before us; but they have left it to us to say whether the conclusion they have come to was right or wrong. We are clearly of opinion that their decision was right. Much subtlety has been introduced into this branch of the law, of which some of the cases cited furnish examples. Of late the courts have inclined to decide these questions upon plain principles. In this case it is impossible to say that the pauper served Jenkinson as an apprentice under the indenture. It does not appear that Jenkinson even knew that the pauper was an apprentice. It appears that Mrs. Dutton had consented to the pauper's going into another service generally; but then he had not mentioned to her where he was going. Afterwards, when he had hired himself to Jenkinson, he returned and told his mistress: but Jenkinson's name was not even then mentioned. She did not dissent from it; but there was no express consent to that particular service. It has been urged, that the subsequent assent of the first master is sufficient to make the second service a service under the indenture; but the contrary is established by *Rex v. St. Helen's, Stone Gate* (*ante*, 550). Besides, under these circumstances, the service to Jenkinson was under a contract of yearly hiring. The pauper served under that contract as a servant, and not under the indenture as an apprentice; and very different duties result on both sides from these different descriptions of service. *Rex v. Ashby-de-la-Zouch* (*ante*, 554,) is strongly in point with the present. The want of knowledge in the second master, and the hiring of the pauper as a servant, are common to both cases; and those facts distinguish this from most of the cases cited in argument. For these reasons, we are of opinion that the service with the second master was not a service under the indenture, and consequently that the order of sessions is right."

5. *The Apprentice must be employed in the Capacity of an Apprentice, and not under the original Indenture.* (a)

A parish apprentice, at the sug-

5. *The Apprentice must be employed in the Capacity of an Apprentice, and under the original Indenture.* (a)

Rex v. Shipton, 8 B. & C. 88; 1 M. & R. 394, S. C. William Partridge was removed from Dudley to Shipton. Order confirmed. Case:—The pauper, at the age of thirteen, was, by indentures of 3rd September, 1816, put

(a) See also as to this, the two preceding cases.

out an apprentice until twenty-one, by the parish of Stanton Long, to John Taylor. After the pauper had been some months at his master's farm, Taylor not having sufficient work for him, asked him if he would go over to a farm, called the Moorhouse, in Shipton, to drive the plough. The pauper said he had no objection, and immediately packed up his clothes and went. The Moorhouse was in the occupation of a Mrs. Corser, the sister of Taylor. Taylor occasionally went over from his residence, and gave his advice to his sister respecting the management of her farm. He gave orders to her servants, but does not know that he ever gave orders to the pauper after he had been sent to Moorhouse. Taylor never told the pauper that he might hire himself or make any engagement with Mrs. Corser, but retained possession of the indentures. No agreement was made between Taylor and his sister respecting the pauper. On the pauper's arrival at the Moorhouse, Mrs. Corser asked if he would stay and drive the plough for his meat and drink for a twelvemonth. He replied that he would, and she sent him to drive the plough. For his services at the Moorhouse for the first and second year the pauper was not paid any money, but was found in clothing (except a pair of shoes and some stockings) and in meat and drink by Mrs. Corser. At the end of the second year, he hired himself for a year to Mrs. Corser for 5*l.*, and served that year, and received his wages. When that had expired, he hired himself for a year for 6*l.*, and received that sum on the completion of the year. During the time that the pauper was in the service of Mrs. Corser, which was four years and four months, he never received any orders from Taylor, nor did he ever return to Taylor's farm after he first quitted it. No assignment of the indentures was made, nor was the consent of any magistrate obtained for placing the pauper with Mrs. Corser. When he had been two years at Mrs. Corser's, Taylor became insolvent, and quitted his farm, after which he ceased to have any thing to do with the Moorhouse, and saw no more of the pauper. Before Taylor's insolvency, and whilst the pauper worked at the Moorhouse, Taylor, on the application of the pauper's mother, furnished him with some shoes, and on another occasion supplied him with some wool to make stockings for him. He also employed a surgeon to attend him whilst labouring under a complaint, and paid his bill. When the pauper left the Moorhouse, his apprenticeship had not expired. Lord *Tenterden*, C. J. "Upon both (a) grounds I think the justices were wrong in their conclusion. In order to gain a settlement by apprenticeship, there must be a continued service under the indenture. If, during the term of apprenticeship, the apprentice hires himself to a stranger to the indenture, the service is not referable to the indenture, but to the contract of hiring; and, consequently, no settlement is gained by apprenticeship. Here the pauper hired himself to Mrs. C. He might, therefore, have gained a settlement by hiring, if he had not been an apprentice. The service was not under the indenture, but under the contract of hiring." *Bayley*, J. "*Rex v. Whitchurch* (*ante*, 556) is expressly in point to show that no settlement was gained by apprenticeship, upon the ground that the service in Shipton was not referable to the indenture, but to the contract of hiring."

Rex v. Christowe, 11 *East*, 95. Elizabeth Pain was removed from Moretonhamstead to Christowe. At the age of seven years the pauper was bound an apprentice by the parish of Christowe to William Ponsford, with whom she lived till she was eleven years old. During the apprenticeship, by a written paper legally stamped and called an indenture, Pain, with her consent, was bound by Ponsford to Smith, as an apprentice, till she attained the age of twenty-one. Smith covenanted with Ponsford to teach and feed Pain. The consideration was 5*l.* 5*s.*, and the indenture was signed and sealed by all three. Lord *Ellenborough*, C. J. "This instrument purports to be a new and original binding of an apprentice by indenture by Ponsford to Smith; it does not recognize or refer to the original indenture of apprenticeship as being an assignment of the apprentice under that indenture; nor does Pons-

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gestion of his master, B., goes to work for C., and, without the knowledge of his master, agrees to work with C. by the year, and serves C. a year under that agreement. He gains no settlement by apprenticeship, because the service is not referable to the indenture.

A parish apprentice, bound by her original master to another master by a new indenture, without recognition of the original indenture, which still subsisted in law, does not gain a settlement by serving her new master as upon a constructive service of the original master under the first indenture, this being only

(a) As to the other point, namely, apprentice within the 56 Geo. III. c. whether this was a putting away of the 139, s. 9, see *post*.

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evidence of the first master's consent to the service with the second, under a new contract of apprenticeship.

But an apprentice was assigned by her master to a second master by indorsement on the indenture; she then bound herself by a new indenture to the second master, and gained a settlement, as the service continued under the first binding.

Service under a second indenture is not sufficient, though the pauper had been previously serving under express consent.

ford thereby assume to have any right to assent to the apprentice serving another master under any former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part that she should serve *Smith as a continuation* of the relation of apprenticeship which she had contracted before with him, Ponsford? This would be to intend a consent contrary to what appears upon the face of the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them: and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service as under the former binding has been inferred: and therefore, without disturbing those cases, but leaving them as we find them, I do not think that this instrument proved the consent of Ponsford to the service with Smith under the original binding." *Le Blanc, J.* "The leaning of the former decisions was to support every case of settlement, by implying the assent of the first master to the service with the subsequent master; but then it must be a consent to the service with the new master under a recognition of the original binding; and there is *no case* (a) where the settlement has been held to be gained under an entirely new binding by an indenture of apprenticeship: and if we were to hold this to be sufficient, we should be carrying the doctrine of constructive assent to a service under the original binding farther than any of the former cases." *Bayley, J.* "In this case the apprentice never undertook to serve the second master upon the terms of the original indenture of apprenticeship to the first master, nor did the first master consent to any such service." See also *Rex v. St. Mary, Hallenday, (post)*.

St. Petrox v. Stoke Fleming, Burr. S. C. 248; 2 Bott, 558. Anne Giles, the pauper, was bound a parish apprentice to Rebecca Gregory of St. Petrox till her age of twenty-one. She served five years; when Gregory, by indorsement on the indenture, delivered it up, together with all her right, interest, and term of years then to come of the apprentice, to Philip Foale of Stoke Fleming; and on the same day Anne Giles, being then fourteen years old, did voluntarily bind herself apprentice by indenture to Foale, and served him under the said indenture at Stoke Fleming for several years. The question was, whether a settlement hereby was gained at Stoke Fleming? It was objected that here was no regular assignment of the first indenture to Foale, it being only delivered up, but not assigned, and the term was not expired when she bound herself to Foale. By the court: "Though an assignment of an apprentice (except in London, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement, for the service continued under the first binding."

Rex v. Ecclesfield, 6 M. & Sel. 174. Order of removal of J. Wostenholm, &c. from Brightside, Bierlow, to Ecclesfield, confirmed. Case:—The pauper, at nine years of age, was bound in May, 1803, as a parish apprentice to S. Carr. He served him eight years, when, in consequence of some disagreement, it was agreed that he should serve P. Cadman for the remainder of the term. Cadman agreed to pay Carr 1s. 6d. per week during that period. The pauper went to Cadman on trial, and then served him with Carr's express consent. After three weeks the original indenture was given up, and another executed; to which the pauper, his father-in-law, Carr, and Cadman were parties. The pauper of his own liking bound himself to Cadman for seven years, to learn the trade of a scissors-maker, and Cadman agreed to take him; there were the usual covenants, and the master agreed to pay the pauper 2s. a week during the last year and a half of the term. No premium was paid to Cadman, but he continued to pay Carr the 1s. 6d. under the agreement. The pauper continued to serve Cadman during the greater part of the remainder of the original term. It was urged that this case was distinguishable from *Rex v. Christowe (ante, 557)*, where, if the second indenture failed, there was nothing to show consent; but that here there was a previous agree-

(a) Except in the next case of *St. Petrox v. Stoke Fleming, supra*.

ment, which continued after the second indenture was made, and if it was void it could not affect the original binding. Lord *Ellenborough*, C. J. "The second indenture is not to be rejected as an entire nullity: although it be not capable of the legal effect intended, that is, to constitute an apprenticeship, it may serve to indicate an intention that the service should not be continued under the original indenture, but should begin *de novo*. I think this case is concluded by *Rex v. Christowe*, which was decided on a review of all the cases." Bayley, J. "In *Rex v. Christowe*, it was settled, that unless there be a consent to the second service under a recognition of the original binding, an instrument purporting to be a new binding is not a consent. Is it possible in this case to say that the second service was a service of the nature above stated, when the time and manner of service are different from those under the original binding? The second master had not the same rights with respect to service as the first, neither had the apprentice the same rights with respect to his employment. In truth, the second indenture was made with another view, and shows that it was never intended that the service should be continued under the first on the same terms as *ejusdem generis*." Abbott, J. said, "That he considered the parol agreement as entirely done away with by the subsequent instrument." Holroyd, J. "The second service being inconsistent with and in a different character from the first, must be referable to the engagement with the second, and not with the first master."

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13. OF VACATING THE APPRENTICESHIP. (a)

If the apprenticeship be prematurely determined, the apprentice is then in a capacity to enter into a new contract, either as a servant or as an apprentice to some one else, by which he may gain a settlement, although a small portion only of the term for which he was bound in the first instance has actually expired. Of course, when he is legally discharged from his indenture, the assent of his original master to his entering upon any other service is immaterial and nugatory; it is important, therefore, to see what amounts to a discharge of the original indenture, and what is insufficient for that purpose. And it will appear that however the parties may intend to relinquish the connection of master and apprentice, and that intention is followed by an actual separation, the indenture will be still considered as in force, as far as the question of settlement is concerned, unless it be formally cancelled, or determined by one of those events which the law has said shall have that effect. There are exceptions to this rule in favour of infants, as will be seen in some of the subsequent cases.

Rex v. Holy Trinity in the Minories, 3 T. R. 605. F. Whitfield, wife of Joshua W. (a patient in Guy's Hospital), removed from Bermondsey to Holy Trinity in the Minories. Order confirmed. Case:—Joshua was bound apprentice to J. Grimes, of Tower Hill, London, tailor, for seven years. He served his master about six years, when his master declined business, and informed the pauper that he wished him to get another master for his good. He then went home to his father who lived in Southwark, with whom he stayed three or four weeks, and if he could have got a service in that time he would have taken it; but not meeting with any, he returned to Grimes, who thereupon told him that he heard Mr. Edwards (who was a taylor, and lived in Holy Trinity,) wanted a man; and told him to go to Edwards, and make an agreement with him for his good; and that he understood Edwards would take him for twelve months. He accordingly went to Edwards and entered into an agreement under seal, covenanting to serve him for twelve months in his business as a taylor: and Edwards covenanted to instruct him, and find him in victuals and lodging, and at the end of the term to pay him 12*l.* for his service. The agreement was not stamped. He was nineteen years of age when he left Grimes; and the indentures were not assigned or cancelled; but after he had served Edwards two months, Grimes gave him up his indentures,

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Of discharging the indenture, or vacating the apprenticeship.

The consent must be given before the indentures are given up.

(a) See division of the subject, *ante*, 451.

13. *Of Vacating the Apprenticeship.*

and he continued to serve Edwards to the end of the year, and then received his wages and applied them to his own use. Lord *Kenyon*, C. J. "It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in *Rex v. St. George, Hanover Square* (*ante*, 547), that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master forty days. The cases which have been decided upon this subject have been determined upon nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is *Rex v. Fremington* (*ante*, 547), where it was held that the apprentice gained a settlement by serving the second master with the consent of the first. The case on the other side is *Rex v. St. Luke's, Middlesex* (*post*, 564), where a general license given by the master to the apprentice to serve whom he would, without any consent to serve any person in particular, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said that this case must be governed by *Rex v. Sandford* (*post*, 565); but there is a solid distinction between them. There the master gave up the indentures previous to the pauper's entering into the second service; but here the indentures were not given up till more than forty days had elapsed after the apprentice had served the second master: and that is sufficient to give him a settlement in that parish." *Buller*, J. "The pauper could gain no settlement by living as a hired servant with Edwards, because the indentures of apprenticeship still existed; and the only question is, whether the master did expressly consent to that service or not? For all the cases show that mere knowledge is not sufficient; knowledge does not imply consent. Now here was an express consent and recommendation of the first master to serve the second; and then the case comes precisely within *Rex v. Fremington*. If, indeed, the apprentice had not gone into Edwards's service, he would not have gained a settlement by serving any other person, because a general license to serve whom the apprentice chooses is not sufficient. By going into the service of any other person, the apprentice would have gone without the express consent of the first master, and therefore might have been recalled by such master; but he could not have been recalled by the first master from the service of Edwards, because of the express consent to serve Edwards. This is distinguishable from *Rex v. Sandford*; for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's service with Edwards." The other judges concurred.

A general license to serve whom the apprentice chooses is not sufficient.

The master may consent to the apprentice serving a second master, as turned over to him, though he at the time gives up the indenture.

Rex v. Langham, Cald. 120; 2 *Bott*, 540. Removal of William Ellingworth from Deanshold to Langham confirmed. Case:—The pauper was bound an apprentice by the parish of Deanshold to Benjamin Stimson, of Langham, weaver, to serve till the age of twenty-four years; under which indenture he served four years, when his master failed, and having no longer employment for him, told his apprentice he might go to his father at Oakham. Upon the apprentice's coming home, his father applied to one Beecroft, of Deanshold, weaver, to take the apprentice for the remainder of the term; the father of the apprentice then went to Stimson, who was at home under confinement, and told his wife that he had got a new master for his son: whereupon Stimson's wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said he had got a new master for his son, and desired the indentures might be given up; upon which Stimson gave the indenture to his wife, who delivered it up to the apprentice's father, Stimson having first made crosses upon it, as a token that he had resigned up the indenture and apprentice: the apprentice was under age. Soon after, Beecroft went to Stimson, to ask him whether he was willing to resign

up his apprentice and to turn him over, as he was going to take him, if Stimson was willing, and his father would clothe him: Beecroft further said (if things came about) he hoped Stimson would not fetch him again; to which Stimson replied he never would. Beecroft then said there was no occasion for a deal of trouble in *turning him over*, if Stimson would be honest; and upon this, Stimson assured him he would never fetch his apprentice away; and Beecroft then declared, that if we have an agreement drawn to our satisfaction, it will be better than having so much trouble about it, and immediately went away satisfied that he might keep the apprentice *as a turn-over*. The apprentice stayed with Beecroft three years and a half by virtue of the above transaction, and an agreement was entered into between the father of the apprentice and Beecroft, in the presence of the apprentice, but he was no party to it, and the parish officers of Deanshold were perfect strangers to it. Beecroft kept the agreement and the original indenture. By Lord Mansfield, C. J. and the court: "There is no difficulty in this case; the indenture continues in force; and the only question is, whether the service of the second was with the consent of the first master? for if so, it is a service under the indenture: of this there can be no doubt, for he consents expressly; he cancels the indenture, and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment, and he undertakes to the second master that he would not reclaim him." Both orders quashed.

Rex v. Offerton, Burr. S. C. 802; 2 Bott, 566. The pauper, when twelve years of age, was by indenture bound an apprentice by the overseers for seven years. The pauper was a party to the indenture. Nearly six years after, the pauper and his master entered into an agreement, that the pauper, upon paying his master 12*d.* a-week and providing for himself, should be at liberty to work for his own benefit during the remainder of his term; and the master should find him a loom for the remainder of his apprenticeship; and the master to receive the 12*d.* a-week as a satisfaction for his service. The indenture was not cancelled or delivered up. The pauper married and removed to Offerton, and there worked during the last forty days before the justices removed him from thence, with the same tradesman who employed his master; and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12*d.* a-week; but the pauper was not able to pay him. The court held, "that the apprenticeship continued; there was no dissolution or intention to dissolve it as between the original master and apprentice. The master knew that the apprentice worked in Offerton, and demanded the 12*d.* a-week for it. An apprentice may work in any parish with the consent of his master; and it is probable the tradesman knew that he was an apprentice."

Rex v. Bradninch, Cald. 461; 2 Bott, 418. The pauper was bound apprentice by the parish to C. Hill, till twenty-four years of age; he continued to live with his master till twenty-two, when his master agreed that if he would give him one guinea in hand, and two guineas more, (being one guinea a year during the residue of his apprenticeship,) the pauper should go, and serve where he pleased; but the master said that he would not deliver the indenture, nor discharge him from his apprenticeship, for he considered him as his apprentice still: the pauper agreed to this, and paid his master a guinea in hand, and went into Gittisham and lived with his father, and paid him 6*d.* a-week for his lodging. He hired himself as a labourer to Miss S. by the day, and continued to lodge with his father at Gittisham, and serve Miss S. till the expiration of his apprenticeship. At the end of the first year of his serving Miss S. he went to his master, Hill, and paid him one guinea for that year, according to the agreement; his master said, "*You continue to work for Miss S.; I think it a very good place, and hope you will continue in it.*" At the end of the second year he went and paid his master the other guinea, who said, you still continue to work with Miss S.; he replied, he did; when his master said, he would look out for the indenture and give it him. The pauper did not know there was any conversation between the master and Miss S. respecting the ap-

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The master agreed that the apprentice should work for his own benefit, but did not give up the indenture; he provided him a loom and knew for whom he worked: Held, service under the indenture.

The continuance of indenture inferred from payments made by apprentice to his first master.

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The bankruptcy of the master of an apprentice did not discharge the indentures, but 6 Geo. 4, c. 16, enacts that it shall.

Where an apprentice agrees with his master for his discharge, and quits his service, but leaves the indentures till the money agreed for is paid, the indentures are not thereby discharged; and service under a second master, by the express consent of the first master, is a service under the indentures.

prentice, but Miss S. knew the pauper was an apprentice. The removal was from Gittisham to Bradninch. Lord Mansfield, C. J. "There can be no doubt in this case. The pauper was certainly not *sui juris*; for, if he had been, he would not have paid a guinea a-year."

In the report of this case in *Cald.* it is stated that the court were clearly of opinion that there was, in this case, with knowledge of the particular service, a consent; and more, a very strong approbation of it.

By 6 Geo. IV. c. 16, s. 49, (*ante*, 482,) it was enacted, that where any person shall be an apprentice to a bankrupt at the time of issuing the commission, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures, whereby such apprentice was bound to such bankrupt. A contrary doctrine had been held before this statute (which took effect from 1st September, 1825.) Thus in *Rex v. Buckingham* (2 Bott, 630), Richard Allen was bound apprentice at twelve years of age to John Cary, whom he served for two years, when J. C. became a bankrupt, upon which Allen, without the consent of Cary, hired himself as a servant for a year to Joshua Glover, of Shepton Bechamp, and served him accordingly for two years. During this service his apprenticeship expired, and Cary delivered up the indenture to Glover. The court were of opinion that Allen gained no settlement in Shepton Bechamp, for that the bankruptcy of the master did not discharge the apprentice from his indentures.

Rex v. Chipping Warden, 8 T. R. 108. R. Lymath, &c., were removed from Chipping Warden to Great Robright. Order quashed. Case:—R. Lymath, in 1776, was bound apprentice by indenture to W. Goodwin, blacksmith, for five years: he served G. for two and a half years under the indentures, when his master left off business, and went to reside in Marston. At that time the pauper agreed verbally with his master to give him 7*l.* for the rest of his time, his master not wishing to turn him over to any one, and it was agreed that the master should keep the indentures till the 7*l.* was paid, which was to be from time to time as the pauper could earn it, and was convenient to him to pay it. The pauper considered himself at liberty to work with any master he pleased, and did work with different masters till the harvest of 1779, when, at the request of Goodwin, he came to serve him as a labourer for about a month, and received his wages according to the rate usually given to labourers in harvest, the amount being deducted from the 7*l.* which the pauper had agreed to pay G. Goodwin afterwards recommended the pauper to serve one Cherry, a blacksmith at Marston, into whose service he went with the knowledge of G., and continued there about twelve months. The indentures were not delivered up till five or six years after the apprenticeship had expired. Lord Kenyon, C. J. "It is clear that in general an apprentice is not capable of contracting the relation of servant to any other master until the end of the term for which he was bound; but it is equally clear, that if the master and apprentice put an end to the apprenticeship by mutual consent, it is the same as if the indentures had never been executed, and the latter may gain a settlement by hiring and service with any other master before the expiration of the term for which he was bound; then there is a third case, that where the apprentice leaves his master, and enters into the service of another. If the indentures still subsist, he is not *sui juris*, but is incapable of gaining a settlement by serving another master, unless he serve with the consent of his former master, and in such case he gains a settlement, not as a hired servant, but as an apprentice. These are axioms in this branch of settlement law, and cannot now be called in question. Now what are the facts of this case? The pauper was bound an apprentice to a master residing in Great Robright, who two years afterwards discontinued business: at this time the parties did not put an end to the apprenticeship: but, on the contrary, the apprentice agreed to pay 7*l.* to the master, who was to keep the indentures until that sum was paid, *the master all this time keeping a control over the apprentice*; the pauper then went into different situations, and among the rest he served a person of the name of Cherry, into whose service he went at the recommendation and with the knowledge of his first master, the indentures still con-

tinuing in force: then, according to all the authorities, this must be deemed a service under the indentures. My opinion, in this case, does not proceed on the ground that the pauper served Cherry a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master." Order of sessions affirmed.

Rex v. Gwinear, 3 Nev. & M. 297; 1 Adol. & El. 152; 2 Nev. & M. Mag. Ca. 216. Appeal from an order of removal from Gwinear to Camborne. Case:—Rule the elder, the father of Philip, was on 1st June, 1789, bound by the parish officers of St. Erth to Richard Tredinnick, of the same parish, farmer, till twenty-one, as an apprentice in husbandry. The apprentice lived with his master some years in St. Erth, and served him in husbandry until he became reduced in circumstances and worked at the mines, employing his apprentice in the same work. The master then removed to the parish of Phillack, taking the apprentice with him. Whilst there, and about two years before the expiration of the apprenticeship, a dispute having arisen between the mistress and the apprentice, the latter left his place without the consent of his master, and never returned, but went to live with his parents in Camborne, his father working as a labouring miner in Hirland mine. While the apprentice lived in Phillack, his master worked at this mine, and the apprentice with him; after he had left his master he continued to work at the same mine under his father. Tredinnick, a few days after the apprentice had left him, found him working for his father in Hirland mine, and told his father that if he kept the apprentice, he (Tredinnick) would take up his wages. The father replied that he did not wish to keep the boy, but that he would not go back. It was then agreed that the boy should be given up to the father in consideration of four guineas, to be paid on the next mine pay day, for the ores on which the father and son were then working. The agreement was made in May, and the money was accordingly paid on the next mine pay day, the 16th of August following, when the indenture was delivered up by Tredinnick to the father. From the time when the apprentice left Tredinnick, he, with his master's knowledge, lived in Camborne with his father, who received his wages, supplying him with meat and clothes and other necessaries. After the apprentice became of age his father delivered up the indenture to him. The question is, whether the pauper was settled in Camborne. *Littledale*, J. "There was no dissolution of the contract of apprenticeship, at all events, before the month of August. All that occurred before is merely agreement. If the four pounds had not been paid, it was not the intention that the indenture should be given up. *Rex v. Chipping Warden* (*ante*, 562) is in point. It is not very material to consider whether there was a dissolution afterwards. I have no doubt that in May the pauper was working with his father under the apprenticeship. He was originally bound to work in husbandry, but afterwards, the master's circumstances being reduced, he worked as a miner, and the apprentice worked with his master as such. His father worked at the same business. It appears to me, therefore, that up to the 16th August the son was working with the father under the indenture." *Parke*, J. "I doubt very much whether the parties ever contemplated any dissolution, and whether it was not intended that there should be a mere transfer. Supposing a dissolution to have been intended, I question very much whether it was *competent* to the son and father to put an end to the indenture. It rather appears to me that it was not competent to them; and if that be so, the indenture could not have been put an end to. But, supposing that it was competent to them to do so, I am quite clear that the indenture was not put an end to till the money was paid according to the agreement. Until then I think the agreement was only executory. It was clearly not considered as operating on the indenture till the money was paid. Upon the first supposition, it is perfectly clear there was a residence up to August under the indenture; and supposing that there was a dissolution in August, there was sufficient residence to gain a settlement before that time. The pauper had worked at the mine for his master, and then proceeded to work there for his father. It seems to be implied in the agreement that he is to continue to work in the same way as he had done for his master. A settle-

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A mere agreement to discharge the indentures on payment of a sum of money, does not operate in discharge before *actual payment*, and a residence of forty days before payment gives a settlement.

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A parish apprentice, bound till twenty-four served till twenty-one, when his master, being about to leave the parish, told him that he might leave him and shift for himself, but if he could not provide for himself, he might return to him: he quitted, and when about four months past twenty-one, bound himself by indenture as apprentice to another master for three years, and served with him the full term: Held, not to have acquired a settlement by service under the second indenture.

Telling an apprentice to go about his business and work for himself, where the indenture was not given up, is no dissolution of the apprenticeship. See *S. P. Rex v. Offerton, Burr. S. C. 802, ante, 561.*

ment, I therefore think, was gained." *Patteson, J.* "I am of opinion that there was a service between May and August under the indenture, whilst the boy was living with his father. If the money had not been paid, the master might have compelled the boy to return. I do not think it was the intention to put an end to the indentures. *Rex v. Harberton (post, 570)* would appear at first sight to favour the supposition that an infant parish apprentice may put an end to the apprenticeship; but upon looking into the case, it appears that the apprentice left his master within a month of twenty-one, and returned seven months after, and then procured the receipt; so that he was of age when the agreement was made. In this case, when the agreement was made the apprentice was not of age." Order of sessions quashed.

Rex v. Bow, otherwise Nymett Tracy, 4 M. & Sel. 383. Order of removal of John Hawkins from Bow to Okehampton quashed. Case:—The pauper, on the 24th of January, 1767, when he was nearly eight years old, was bound as a parish apprentice to Sillifant of Norththawton, to serve till he attained the age of twenty-four. He served until within a short time of his attaining the age of twenty-one, when his master being about to leave Norththawton, and no longer wanting the pauper's service, told him he might leave him and go where he liked, and shift for himself, but that if he could not provide for himself he might return to him. Upon this the pauper quitted Sillifant, but his indentures were not given up to him, nor cancelled, nor was any thing said about them. Upon quitting Sillifant he hired himself to another person in Norththawton, and served until nearly four months after his being of age, when, without any communication with Sillifant, he bound himself as an apprentice by indenture to Webber at Okehampton, for three years, to learn the business of a tanner, to which indenture his father was a party as a security for his service. Under this indenture he served Webber for the three years. *Lord Ellenborough, C. J.* "If the pauper was not in a condition to convey to Webber a present right to his service at the time when he bound himself by indenture to him, I am at a loss to discover how it could enure as a valid binding afterwards. Now, at the time when the second indenture was made, the first master had not parted absolutely with the apprentice, though I agree that he had done that which might be an answer to any action by him on the indenture, or for harbouring his apprentice. Still this being but a parol agreement on his part that the apprentice might go whither he would, the master might by parol resume what he had granted by parol, the relation which had been created by deed not being capable of being dissolved by parol. The original indenture therefore still subsisted both as to master and apprentice: as to the master, because he might revoke his license and resume his authority: and as to the apprentice, because if he was unable to provide for himself, he was at liberty to return. *Le Blanc, J.,* said "The difficulty of maintaining that here was a good binding to Webber is, that there does not appear to have been any dissolution of the first contract; on the contrary, both parties contemplated that it still subsisted; for the license given to the apprentice was to go and see if he could shift for himself, and if he could not, he was to return under the indenture. There was a sufficient reason for not giving up the indenture, in order that the parties might have the benefit of it." *Bayley, J.* "Unless the first indenture was at an end when the pauper entered into the second, he was not at that time *sui juris* to contract, which I take to be the question, and that to say the second indenture was only voidable is no answer to it." Order of sessions confirmed.

Rex v. St. Luke's, Middlesex, 1 Bla. Rep. 553. W. Hutchins was bound a parish apprentice to Frost, a shoemaker in Southwark, till his age of twenty-four, and served him there three years. The master then removed to St. Luke's, taking the apprentice with him, where he served four years. The master then told him to go about his business, and work for himself; but the indentures were not cancelled, nor given up. The pauper hired himself as a journeyman to several masters of the same trade in different parishes: and F. did not know what master he worked with after he left him, nor ever called upon him to account for what money he earned, nor ever made any

provision for him. He worked and lodged the last forty days of his apprenticeship in St. Leonard, Shoreditch. Lord Mansfield, C. J. "The whole turns upon the indenture of apprenticeship continuing. It is agreed that it did continue. In 1 *Mod.* 190, there is a strong case: A father, to whom the son was apprenticed, gives up the indenture: Held, not to destroy the apprenticeship, because the indentures were not cancelled. This case is not so strong as that. This is no service to the master, nor an assignment of the apprentice. The indenture continues, and disables him from gaining another settlement." *Wilmot*, J. "I think the pauper continued an apprentice and was incapable of gaining a fresh settlement by service, as not being *sui juris*. The only question that could be made is, whether such a general consent can operate as an assignment of the apprentice to another particular master? But this general dismissal is a total dissolution of the apprenticeship, so far as it entitles the master to any future service. It is not carrying on the business of the master." *Yates*, J. "The master might have revoked his consent, and called him back at any time. There is no privity between the first and second master." *Aston*, J. "The difficulty has arisen from the apprentice happening to have hired himself to one of the same trade. Had it been another trade, no man could have entertained a doubt."

Rex v. Hindringham, 6 T. R. 557. H. Beck removed from Hindringham to Blakeney. Order quashed. Case:—The pauper, in March, 1780, aged seventeen, bound himself an apprentice to F. Wells, of Blakeney, mariner, for four years, and resided there under his indentures above forty days. When he had been an apprentice about thirteen or fourteen months, he went on shore at Burlington Bay, and meeting with a press-gang, entered as a sailor with the consent of his master, but the indentures were neither delivered up nor cancelled during the apprenticeship. He continued in the king's service about two years, and was then discharged, when he went to his father's house at Bale in Norfolk, and continued there for some weeks. At Whitsuntide, 1783, he hired himself to A. Wilson, of Hindringham, till the Michaelmas following, when he hired himself again to Wilson for a year, which he also served in H., and on the second of March in that year the apprenticeship expired. Lord Kenyon, C. J. "There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the king's service. But I desire it may not be taken for granted, that an infant who binds himself apprentice,—a contract so notoriously for his own benefit,—may put an end to that contract at any time during his minority. I enter my protest against discussing that question now: it will be sufficient to determine it when it necessarily arises. In this case the pauper bound himself to Wells by indenture, under which he served in Blakeney more than forty days; afterwards, when he was pressed into the king's service, he agreed to go as a volunteer with the consent of his master, evidently implying that he did not then put an end to the indentures. It appears to me that the indentures still continued in force, and consequently that the pauper could not enter into a legal contract of hiring with Wilson at the time he engaged with him, he not being at that time *sui juris*." Order of sessions quashed.

Rex v. Sandford, 2 Bott, 391. William Webber was removed from Sandford to Bishopstawton. Order quashed. Case:—The pauper was bound an apprentice by the parish of Bishopstawton, at the age of eleven, to Edmund Sage, till twenty-four: he lived with Sage for five years, when his master gave him up his indenture, and recommended him to live with William Verney, of Chittlehampton, thatcher, with whom the apprentice made an agreement as a servant for three years: while he was with Verney, Sage had a conversation with Verney, and desired him to keep back some of the pauper's wages to provide him with clothes, apprehending that otherwise he would come upon him: about the expiration of that time he returned to Bishopstawton (where Sage then resided), and lived with one Toyte there, with his master's knowledge, who frequently conversed with Toyte while the pauper lived with him, but not upon the subject of his apprenticeship: after the pauper had lived with Toyte three months, he came back to Sage's house, and lived with him for a month, paying his master 6d. a-week for his lodging. By

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If an apprentice enter the king's service with the consent of his master it does not avoid the indentures.

Delivering up the indentures to a parish apprentice, when he is under age, does not discharge the apprenticeship.

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Nor when of full age. See *post*, 568, *Rex v. Austrey*, and *Rex v. Eccleshall*.

The mother of an apprentice, before the expiration of his apprenticeship, applied to his master to give him up to her, to which he assented, and the apprentice left him; but the indentures remained in the hands of the overseers, and was never applied for or given up: Held, that the apprenticeship was not put an end to by this agreement, although the master refused to take back the apprentice.

Lord Mansfield, C. J. "It seems to me clear that the pauper could not gain a settlement after the first five years under the indenture as an apprentice, because neither party in fact considered the service as such: they considered the indenture as given up and put an end to for ever, so that the service was not, nor was intended to be, in the capacity of an apprentice; neither did the pauper gain a settlement as a servant, because there could not be such a service in point of law during the existence of the indenture: so that though in reality there was a service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because, in point of law, the indenture still subsisted." The other judges concurred.

Rex v. Notton, Burr. S. C. 629; 1 Bott, 712. In this case Benjamin Watson, the pauper, when an infant, was bound out a parish apprentice to Hannah Cuttle, of South Hundley, widow, until he should attain the age of twenty-four years. After he had served about six years she quitted her farm to her son Stephen, and left the apprentice there with him. The apprentice lived with Stephen several years. Afterwards, being desirous to leave the service, he applied to his master, who told him he might go where he pleased. Whereupon he hired himself at several places, and received the wages to his own use. In May, 1766, Stephen gave up his indentures to him. In February, 1767, he hired himself to John Baildon, of Notton; and Stephen being told of it in conversation, said he thought it a good place for him. He served Baildon at Notton above forty days, and then attained his age of twenty-four years. The court were clearly of opinion, that the service with Baildon in Notton was not a service under the indenture of apprenticeship, consequently his residence in that parish upwards of forty days was not sufficient to gain the apprentice a settlement there.

Rex v. Skeffington, 3 B. & Ald. 382. Removal from Halstead to Skeffington. Order confirmed. Case:—The respondents proved a hiring and service by the pauper in 1812. The appellants then gave in evidence an indenture of apprenticeship, dated 1805, by which the pauper bound himself apprentice to William Dudgeon for ten years. (a) A premium of 12*l.* was stated in the indenture to have been paid to Dudgeon with him by the parish of Tugby, which was also stated to have been paid by them out of a charitable donation fund belonging to that parish. No evidence, however, was given of the premium having been paid out of a charitable fund, except the above statement on the face of the deed, and the declaration of the parish officers at the time they paid it, that it was charity money. The deed was objected to as not having any stamp, but the objection was overruled. The pauper served under the indenture for four years in St. Mary, Leicester, when his mother applied to Dudgeon to give him up to her, she saying she had procured another master. The master said she might have him and welcome. They all agreed to part, and the boy went away with his mother. The indenture remained in the hands of the overseers of Tugby, and was never delivered either to the boy or his mother, nor applied for by any of the parties; but the master said he would have given it up if it had been at the time in his possession. The overseers of Tugby afterwards applied to Dudgeon to take the boy again; but he said he would not, adding, unless the magistrates make me take him again, I have done with him; and he never heard any thing more on the subject. Abbott, C. J. "If it had been shown in the present case that this apprenticeship had ever been well constituted, I should have been of opinion, upon the authority of *Rex v. Bow* (*ante*, 564), that the agreement between the parties in this case was not sufficient to put an end to the indenture. I think, also, that the fund out of which the premium is said to have been paid was a public charity within the meaning of the exception in the stamp act. But I think that there is no sufficient evidence in this case to show that the premium was in fact paid out of such a fund. It is stated in the case, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted

(a) See *Rex v. Llangunnon*, 2 Bar. & Adol. 618, *post*.

to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground, I am of opinion that the indenture ought not to have been received in evidence; and, therefore, that the sessions had nothing before them to show that the pauper was not *sui juris* at the time when he served for a year in Skeffington. The order of sessions must, however, be confirmed, because their ultimate decision, although founded on wrong grounds, was correct.

Rex v. Great Wigston, 3 B. & C. 484; 5 D. & R. 339; 2 D. & R. Mag. Ca. 445. John Samson was removed from St. Margaret, Leicester, to Great Wigston. Order confirmed. Case:—The pauper, when eleven years old, was bound apprentice to John Humberston for seven years. The indenture was executed by the master, the pauper, and the grandfather of the pauper; the pauper's father being a soldier abroad. The grandfather paid a premium of 7*l*. The pauper served H. under this indenture between three and four years at Great Wigston, when some disagreement taking place between them, H. agreed to sell the pauper the remainder of his time for sixpence. The pauper paid H. the sixpence, and left him the same day. The indenture had never been in the possession of any of the parties, but had been kept for all the parties by the person who prepared it, and no application was made for it to be delivered up. The grandfather was not even privy to the agreement for parting. A few days after the pauper left H. he bound himself apprentice to Thomas Wain, of St. Mary, for seven years, and served him under the indenture for five years, and resided during that time in that parish. *Abbott, C. J.* "I am of opinion that the order of sessions was right. It is a general rule of law that an infant cannot do any act to bind himself, unless it be evidently for his benefit. Binding himself an apprentice has been considered such an act, and therefore it has been held that an infant may be a party to an indenture of apprenticeship. But if the act of binding himself an apprentice is for the benefit of the infant, it is impossible to say generally that it is for his benefit to dissolve such a connection, for such a proposition involves a contradiction. That being the general rule of law, we must inquire whether the dissolution of the apprenticeship here was for the benefit of the infant. In *Rex v. Mountsorrel*, 3 M. & Sel. 497, (*infra*,) the master had run away and deserted the apprentice; the latter, therefore, could no longer derive instruction or support from him. Upon that ground the court thought that it was for the benefit of the apprentice to be released from the indenture, and in my opinion rightly, because otherwise he must have remained unemployed and unsustained. Here there are no facts stated from which we can infer that the dissolution of the apprenticeship was beneficial to the infant, and therefore this comes within the general rule; and the first binding never having been dissolved, the second is a nullity, and no settlement could have been gained by service under it." *Bayley, J.* "The sessions were clearly right in the decision to which they came upon this case; the only error they have committed is, that they have sent a case for our opinion upon which no reasonable mind could entertain a doubt." *Holroyd, J.* concurred.

Rex v. Mountsorrel, 3 M. & Sel. 497. Removal from Burton Lazars to Mountsorrel. Order confirmed. Case:—The pauper, Henry Henfrey, in 1807, being under age, bound himself apprentice by indenture for seven years, to a person residing in Mountsorrel, the pauper and the master being the only parties to the indenture. When the pauper had served about a year, the master left his house and ran away for debt; in consequence of which the pauper applied to him by letter to give up the indenture, and with the master's consent the indenture was given up to the pauper by the person who had the custody of it; the term of seven years not having then expired, and the pauper being still under age. The consent of the pauper's mother, who was his only surviving parent, was not asked at the time of making the indenture, or when it was given up. The pauper, after the

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As a general rule, it is for the benefit of an infant not to dissolve an apprenticeship. Some evidence must therefore be given to show that it is for his benefit, for the court will not infer it.

Where an infant was bound apprentice by an indenture, he and his master being the only parties, and after serving some time, the master having run away, he procured the indenture to be given up to him with his master's consent, and afterwards served a year: Held, that

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it was for his benefit, under the circumstances, that he and his master should be at liberty to put an end to the indenture.

indenture was given up, and during the term for which the indenture was made, and while he was under age, hired himself as a yearly servant. Lord *Ellenborough*, C. J. "Is not this a case in which it was clearly for the benefit of both parties that the indenture should be put an end to? The master had run away, and was no longer in a situation to afford instruction or maintenance to his apprentice; therefore, if the indenture had continued, the consequence must have been that the apprentice would have remained in a state of ignorance and starvation. If that were a state for the benefit of the infant, there would be something in the argument. But as it is, the parties have done that for themselves which the magistrates, upon application to them, would have ordered to be done; they have discharged themselves of the indenture, which was burdensome to both parties. Under these circumstances, I am of opinion that it was competent to them to discharge themselves of each other, since the continuance of the contract would certainly have been of no benefit to the master, and as certainly would have been prejudicial to the apprentice. The benefit of the infant is to be regarded, and in looking to that, one cannot but see that idleness, and the probability of extreme indigence, were the necessary consequences of continuing the indenture, from which the magistrates would have interposed to relieve him. I therefore think that we do not indulge any mischievous discretion in the infant, when we permit him to redeem himself from such a probable state of indigence and idleness. Then if this be so, the pauper was no longer precluded from entering into another service than while his indenture continued." *Le Blanc*, J. "In *Rex v. Hindringham* (*ante*, 565), the master and apprentice did not consent to the indentures being delivered up or cancelled." *Bayley*, J. "I consider *Rex v. Hindringham* as having proceeded upon the ground that it was for the infant's benefit that the indenture should continue. Here we are in a case where it was notoriously to the prejudice of the infant that the indenture should continue; therefore I think it was in the power of the master and infant together, by vacating the indenture, to dissolve the contract.

A parish apprentice, when under age, cannot consent to his discharge.

Rex v. Austrey, Burr. S. C. 441; 2 Bott, 542. F. Orton, at ten years of age, was, in April, 1744, bound a parish apprentice to S. Lythall, of Grendon, till his age of twenty-four. He served with his master there till Michaelmas, 1754, at which time the master, in consideration of 40s. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed by the master on the indenture, which he then delivered up to the apprentice. The apprentice then hired for a year, and served that year in Higham. At Michaelmas, 1755, he hired for a year, and served that year in Austrey. He was then upwards of twenty-three, but not twenty-four years of age. The removal was to Grendon, and the sessions quashed the order. Lord *Mansfield*, C. J. "The whole depends upon the question whether he was of age, or under age, at the time of his consenting to the discharge? And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing, for the consent of an infant apprentice is as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service, but was intended to be altogether general, and is even founded in a mistaken apprehension that the apprentice could consent to his being discharged, which he, being an infant, was not capable of doing." The other judges were of the same opinion.

But when of full age he may consent to his discharge, and the consent of the parish officers is not necessary.

Rex v. Ecclesal Bierlow, Burr. S. C. 562; 1 Bla. Rep. 592. The pauper, S. Wilshaw, being a parish apprentice, after he had attained the age of twenty-one years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards he hired and served a year in Warslow, which was within the term comprehended in the indenture. It was objected, that as the binding was by the parish he could not cancel the indentures without the approbation of the overseers. Lord *Mansfield*, C. J. "There seems to be no necessity of the parish officers joining to the consent to discharge this apprentice. There is no authority for it. And I see no

inconvenience to the parish, or to any one else, in its being done without their concurrence. The act empowers them to bind the man-child out apprentice till he comes to the age of twenty-four. And the act was necessary to make valid the binding of the male parish apprentice till his age of twenty-four, for he could not be bound longer than till twenty-one without the aid of the act; and two justices are to assent to this. But the same reason doth not hold as to the discharge of the apprentice, this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master; therefore the apprentice, being of age, if the master and he agree to it, they two may dissolve the contract; if so, then this person was *sui juris* when he hired himself at Warslow; and consequently he gained a settlement there by a hiring and service for a year."

Rex v. Weddington, Burr. S. C. 766; 2 Bott, 545. The pauper, T. Lawrence, was born in Chilvers Cotton, where his father then resided under a certificate from Weddington. When the pauper was of the age of eight years and a half, he bound himself apprentice by indenture, with his father's consent, (who was party to the indenture,) to W. Meigh, of Chilvers Cotton, for seven years, and served him there one year and a half, and then the indenture was destroyed, by consent of the master, the father, and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to T. Maydlin, of Bulkington, for seven years, and served him in Bulkington for four years, and then this indenture was destroyed by consent of Maydlin, the father, and the apprentice. The pauper after this bound himself apprentice to Shaw, in Chilvers Cotton, and served him there two years. About three years after, he hired himself for a year to Smith, of Chilvers Cotton, and served him in that said parish for the year. He was removed to Weddington. Lord Mansfield, C. J. "The single question is, whether the indenture of the apprenticeship in Bulkington was void or not, there having been a former indenture, but such former indenture having been cancelled by agreement between the master, and the father, and the apprentice? The case of *Austrey* (*ante*, 568) was determined on particular circumstances. The question was, whether the parish officers who bound out the apprentice under a special authority ought not to have been consulted about discharging him, and to have given their consent to it? The whole policy of the 43 Eliz. might be defeated, if the master and parish infant apprentice could, by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another.

Rex v. St. Mary, Kalendar, Burr. S. C. 274; 2 Bott, 540. J. Miles, the pauper, was bound by indenture an apprentice for seven years to J. Gregory, of St. Michael's, and under that indenture served him in St. Michael's for five years; when he left his master, the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. About a year afterwards the father of the pauper contracted with W. Stockdale, of Twyford, for binding pauper apprentice to Stockdale for four years; and in consequence of that agreement the pauper went to Stockdale on trial, and lived with him in Twyford for one year and three quarters; but no indenture was executed, nor any other agreement made. While the pauper lived with Stockdale, Gregory knew of his being in the service of Stockdale. But no other proof was made that Gregory consented to the contract made between pauper's father and Stockdale. By Lee, C. J. and the court: "There can be no ground to consider this as a settlement at Twyford, but upon supposing the first indentures to have subsisted, and that the service at Twyford was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity, (and they are the same thing in this case,) to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original

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An apprentice, bound with his father's consent may be discharged, although under age, by agreement of all the parties to the indentures.

Indentures being exchanged between the master and apprentice, amounts, in law or equity, to a cancelling of them.

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Exchanging is virtually a cancelling of indentures.

A parish apprentice, under age, paid money for his discharge, but the indentures were not delivered up, though offered to the apprentice's father, who did not take them, because he thought it not material. The indenture is considered as not existing from the time the money was paid.

master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at Twyford was not under, but contrary to, the first indenture; it was in consequence of a fresh agreement, and for a new term.

Rex v. Titchfield, Burr. S. C. 511; 2 Bott, 630. P. Warfield bound himself apprentice by indenture to W. F., and inhabited with his master above forty days at M., but falling sick, he on account thereof, and with the consent of his master, went to his father in Bewley, and there continued forty days, and was sick all that time, and to the time the order was made. On his going to his father the indentures were mutually given up, but not cancelled. The court held that an inhabitancy by reason of sickness shall not gain a settlement, and also that there is no difference between the indentures being given up, and being cancelled. They amount to the same thing.

Rex v. Harberton, 1 T. R. 139. Order of removal of J. Egbert from Harberton to Ashpreington quashed. Case:—The pauper was bound by the parish of Harberton as an apprentice to W. Soper, until twenty-four years of age; he continued with his master until he was within one month of twenty-one years of age, when he deserted his service, and was absent seven months, and then he returned to his father at Harberton, where he staid a few weeks, and then offered himself as a servant to one Edmonds, of Ashpreington, who refused to take him until he showed a receipt from his master, Soper, for buying off his time: the receipt was "Feb. 24th, 1783. Received of J. Egbert 4*l.* 4*s.* for the remainder of his time, by me, W. Soper." The receipt was obtained by the pauper's father, at the request of the pauper. At the time the receipt was signed and the money was paid Soper offered to give up the indenture, which the father did not take, not thinking it material, and the pauper himself was not present; the master continued to keep the indentures uncanceled until after the pauper was twenty-four years of age, when he delivered them up to him: after signing the receipt, the pauper, being then in his twenty-second year, hired himself for a year to serve Edmonds, and also another year, both of which he served at Ashpreington: at the time of the pauper's hiring himself to Edmonds he showed him the receipt. Lord Mansfield, C. J. delivered the judgment: "As I have often said, it is of more consequence in most cases that the law should be certain than what the law is: it is particularly so in questions relative to settlements. And perhaps if this court had never gone farther on the present subject than to inquire whether the indentures were in fact cancelled or delivered up, it would have been more convenient than to have decided on the particular circumstances of each case, and to have examined whether they amounted to a relinquishment or cancelling of the indentures or not. But the cases have gone beyond that line; and therefore it might now be attended with more inconvenience to the public to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined. Where the facts stated are such that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case in which a court of equity would give relief, it would be productive of great inconvenience and uncertainty: it would increase the litigation of the poor laws, which are already a disgrace to the country; and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect. If the justices at their sessions, or even out of sessions, are to be erected into chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men when left to decide *secundum discretionem boni viri*, must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all. The question then is whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time:

he gave a receipt for the money as such, and offered them to deliver up the indentures: if it was not done in fact, it was owing to the pauper's father not thinking it material; and on the pauper's attaining the age of twenty-four years, the master did in fact deliver up the indentures. After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them. The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at Ashpreington."

Rex v. Eakring, Burr. S. C. 320; 2 Bott, 541. Order of removal of G. Witworth from Eakring to Selson discharged. Case:—Witworth was put out a parish apprentice to R. Tomlinson, of Eakring, till his age of twenty years. He served his master under this indenture for several years at Eakring. About three years before he attained twenty years of age he ran away from his master, and loitered for some time about the country. In the mean time his master died. And at Martinmas after, Witworth hired himself as a servant to W. Flint, of Selson, for a year, and served him that year at Selson, and received all his wages to his own use, the executors of Tomlinson taking no notice of him. But he had not at the expiration of the said service attained his age of twenty years. It was contended that after the master's death the apprentice was at liberty to hire himself. Apprenticeship is a personal trust between the master and servant, and is determined by the death of either master or apprentice. The counsel on the other side owned that it was not defensible. And the court was of the same opinion. (See *Barter v. Burfield, 2 Str. 1267.*)

Rex v. Sheepshead, 15 East, 59. Removal of T. Lees from Sheepshead, in Leicestershire, to Uttoxeter, quashed. Case:—The pauper was put out apprentice by a parish indenture, dated 19th of April, 1788, by the parish of Uttoxeter, to Mary Rawlins, of Uttoxeter, and served her there from that time for three or four years, till March, 1791, when she gave up the farm to her son, who agreed to take the apprentice into his service and keep him, and Mrs. Rawlins was to have nothing more to do with him. This was previous to 32 Geo. III. c. 57. During the time he lived with the son, Mrs. Rawlins died; the pauper continued some time longer with the son in Uttoxeter, serving him, when John Rawlins told the pauper he might do what he could for himself, and if he could not get a good place he would get one for him. The pauper then went and hired himself for fifty-one weeks to Mrs. Phillips, in the parish of Field. John Rawlins, on being informed by the pauper that he had so hired himself, asked the pauper what sort of a place it was that he had got; and on the pauper's describing it as a good place, John Rawlins said he was glad it was a good place, and he might go thither. The pauper went into Mrs. Phillips's service, stayed above forty days with her, and Rawlins gave him a suit of clothes at that time. When the pauper left Mrs. Phillips, he sent his wife to Rawlins for his indentures, and they were delivered to her. Lord Ellenborough, C. J. said "That there was no need to cite cases to show that after one assignment of the apprentice, every assignee may go on assigning *ad infinitum*; that there were cases enough to that effect. But the question here was, how far the statute had altered the law?" His lordship asked if there were any cases since the statute. To which it was answered that there were none; but that the provisions of that statute did not affect the present case. It enacts "that upon the death of any master or mistress of a parish apprentice during the apprenticeship, the covenant in the indenture for maintenance of the apprentice shall not continue in force longer than three months after the death of the master or mistress." (See Vol. I. tit. *Apprentice*.) But by sect. 5 there is a proviso that the act shall not extend to any parish apprentice, but to such only as shall be living with and make part of the family, or be in the actual employment of such original master or mistress, or of any subsequent master or mistress appointed under that act, at the time of the death of such masters or mistresses respectively. That here the pauper was neither living with nor part of the family of Mrs.

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Rex v. Foulness, ante, 535, the master deserted the apprentice, but as the master could not plead this as a bar to an action, K. B. held, that the indentures continued.

Before 32 Geo. 3, c. 37, all apprenticeships determined by death of either master or apprentice.

Apprenticeship a personal trust.

A parish apprentice, not living, at the time of his mistress's death, with her appointee, under the provisions of 32 Geo. 3, c. 57, cannot gain a settlement by service with another during the three months, though with the express consent of such appointee.

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R. at the time of her death, nor of any subsequent master or mistress appointed under that act. Lord *Ellenborough*, C. J. "The words 'subsequent master or mistress' mean such as become so by the provision of the statute; it is the service under the authorized substitution that the act applies to. But how is the substitution by the party a substitution under the act? If it had not been for the act, I should have been with the appellants."

The manner in which apprenticeships are affected by certificates will be explained under the head *Certificates*.

14. *Evidence in Settlements by Apprenticeship.*

14. EVIDENCE IN SETTLEMENTS BY APPRENTICESHIP.

As an apprenticeship can only be constituted by *deed*, the deed must be proved, or if it is lost or destroyed, *secondary* evidence of its contents may be given.

The register secondary evidence.

By 42 Geo. III. c. 46 (*ante*, 469), overseers of the poor are directed to keep a book for entering the name of every apprentice bound out by them, and each entry is to be signed by two justices, according to a form given in a schedule; and by section 3 (*ante*, 470) it is enacted "that every such book shall be deemed to be sufficient evidence in all courts of law whatsoever in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of the court that the said indentures have been lost or destroyed."

By sect. 2 a penalty is attached to the not providing such books.

By sect. 5 a like entry shall be made when an apprentice is assigned, under 32 Geo. III. c. 57. (See the act, *ante*, 469.)

If an indenture be lost, other evidence may be received of its contents and existence.

Rex v. East Knoyle, Burr. S. C. 151; 2 Bott, 644. The special case from the sessions in the part relating to this point, was as follows: "And it appears to this court, upon the evidence now given, that J. B. was bound apprentice to W. W., of East Knoyle, cordwainer, and that he served," &c. &c. "But the indentures were not produced, neither did it appear to this court whether the duty of 6d. in the pound, directed to be paid by the 8 Ann. c. 9, was paid, or whether the indentures were stamped." It was objected that evidence not legal had been received, for parol evidence of an indenture had been received which they state not to have been produced, and they give no reason for not producing it. And also that it did not appear that the duty was paid or the indentures duly stamped. But the court over-ruled the objection, for it is stated "that it appeared to them that he was bound, and that it is not necessary that this evidence should appear to us. Perhaps the indenture was lost, and in that case could the justices receive no other evidence of the binding? And as to the duty and the stamp, they do not say the duty was not paid, or that the indenture was not stamped."

In 1806 a question arose on an indenture made in 1774 or 1775, which was lost. The presumption that all was rightly done after the lapse of so many years is right, notwithstanding negative evidence of stamp officers that such indenture had been stamped, &c. during the above period.

Rex v. Long Buckby, 7 East, 45. Removal of the pauper from Long Buckby to Newport Pagnell quashed. Case:—The pauper, in 1774 or 1775, was bound apprentice to J. D., of Long Buckby, shoemaker, for seven years, for a premium of 12*l.*, which was paid, and the indenture executed by the pauper, his mother, and Dickens, the master, with whom the pauper served his full time, in Long Buckby. Only one indenture was executed, which after seven years was given to the pauper, and was proved to have been lost. For twelve years past the pauper had resided at Long Buckby, during which time he had been often relieved by that parish, and had received *town's money* from it, which *town's money* is given away at Christmas to parishioners. No further evidence was given by the appellants: but the respondents proved, by the deputy registrar and comptroller of the apprentice duties, that it did not appear that any such indenture had been stamped with the premium stamp or enrolled, from 1773 to 1805. But the sessions presumed that all had been rightly done. Per Lord *Ellenborough*, C. J. "The question before the justices was, whether the presumption that all was rightly done, after the lapse of so many years, were sufficiently rebutted by the negative evidence of the officer; they thought not, and we cannot say they have done wrong, for the presumption of law is to be favoured; and against the

negative evidence they may have set the possibility of an irregularity in the returns made to the office." Order of sessions confirmed.

Rex v. St. Helen's, Abingdon, Burr. S. C. 292, 735; 2 Bott, 600. The evidence relating to the indenture was, J. Hudson, the mother of Joseph Hutt, the father of the children, removed (who had absconded), gave in evidence that Joseph, her son, in 1733, "was bound apprentice to his grandfather for seven years; and that the indenture was delivered into the custody of W. H., his grandfather, as she had been informed by Joseph; she never saw the indenture, and knew nothing of it, but from the information of Joseph; it was reputed in the family that Joseph was his apprentice; and he was so described in the grandfather's will." Joseph served the grandfather five years in St. Helen's under the indenture. The grandfather provided for Joseph during those five years in clothes and necessaries; the grandfather died in 1738, leaving M. H. his widow, and John H. his son; application was made by the parish of St. Saviour, in December, 1748, to John, who then lived with his mother in the house where the grandfather died, and where his goods and effects were, to know whether he had in his custody any indenture of apprenticeship between William and Joseph, and Joseph said he could not find it. And here the inquiry stopped as to him and all other persons. And this was the only evidence that the indenture of apprenticeship was lost. John Hutt gave in evidence that he was employed by his father, William Hutt, to draw an indenture between his father and Joseph, which he did, but not on stamped paper; and that after the death of William Hutt, Joseph refused to serve his widow, because the paper writing was not stamped. The removal was of Joseph's wife from St. Saviour's to St. Helen's, and was confirmed by the sessions. And *per curiam*: "There is not stated enough to show that this is a binding within the act." Both orders quashed.

Rex v. Castleton, 6 T. R. 236. Martha Pedley was removed from Castleton to Bomford. Order quashed. Case:—The pauper was alleged to have been bound an apprentice to N. Timms, of Castleton, by indentures, about 1780. There were two parts of the indenture, one of which remained with the parish of Castleton, and was destroyed; the other was given to Timms, who delivered the same to Miss Taylor, of Bomford, at the time of the assignment hereafter mentioned. Application was made to Miss Taylor, not then nor now residing at Bomford, for that part of the indenture so delivered to her, who said she could not find the same, nor did she know where it was. Miss Taylor is living, but was not subpœnaed to the sessions. Timms afterwards, by parol, assigned the pauper to Miss Taylor, in Bomford, and the pauper, with his consent, served her in Bomford upwards of forty days. The sessions were of opinion that the above was not sufficient evidence of the indenture. The only question is, whether that part of the indenture which was delivered to Miss Taylor is properly accounted for? The court thought the case too clear for argument; that if the indenture could not be produced, evidence must be adduced to show that it was lost or destroyed. Here it was traced to the hands of Miss Taylor, and no further evidence was given to show what was become of it. Order of sessions confirmed.

Rex v. Denio, 7 B. & C. 620; 1 M. & R. Mag. Ca. 91. The pauper was bound by the overseers of Llanbeblig apprentice to John Connell, a hatter, residing at Pwllhely, in Denio, about twenty-three years ago, by an indenture for seven years, on which the pauper said he believed there was a stamp, that it was signed and sealed, but that there were no justices present at the time of the signing and sealing of the indenture, nor did the pauper recollect being at any other time before any justice respecting it; there was no evidence that the assent of two justices had been given, or that the parish officers were parties to the indenture; the indenture was kept by Connell, and the pauper never saw it afterwards; the pauper served in Denio, under the indenture, for the seven years; when the apprenticeship expired, the pauper asked Connell, who was then a rated inhabitant of Denio, but did not reside or pay taxes there when the appeal was tried, for the indenture, who said that he had not got it, but that it was with the overseers of Llanbeblig. No other witnesses were called, nor any further evidence given re-

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The loss of the indenture must be proved.

Stamp not always presumed.

The loss of the indenture and counterpart must be proved.

Proof by an apprentice, that when his apprenticeship expired he asked his master for the indenture, who said it was with the overseers; and that their successors had searched for the indenture, but could not find it; is not sufficient, the master being alive, and not subpœnaed.

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Declarations of deceased apprentice respecting loss of indentures and their contents inadmissible, where it did not appear they had ever been in his possession, and the court refused to send the case back to be re-stated.

To prove that an indenture of apprenticeship had been signed only by one overseer, before parol evidence of only one having been appointed could be allowed, the officers of that year themselves must be subpoenaed.

specting it, except that the present parish officers of Llanbeblig proved at the trial that they had searched among the papers belonging to that parish for the indenture, and that it could not be found; and that all the parish books and papers of about that time were missing. *Bayley, J.* "The decision in that case (*Rex v. Morton*, post 575) did not proceed on the ground that the declaration of the executrix was admissible, but that of the declaration of the pauper was admissible, so as to show a possession of the indentures by him; it showed also that further search or inquiry was necessary, because he stated that it had been given up to him, and that he had burnt it. In this case the master was living, and might have been called as a witness to prove either that he had delivered his copy of the indenture to the parish officer, or had destroyed it. His declarations were clearly not admissible in evidence. There was not sufficient evidence to show that a *bona fide* and diligent search was made for the instrument, where it was likely to be found, so as to let in parol evidence of its contents. *Rex v. Castleton* (ante, 573) is precisely in point."

Rex v. Rawden, 4 Nev. & M. 97; 2 Ad. & Ell. 156. On appeal against an order for the removal of Mary Oldfield, the widow of Thomas Oldfield, from Golcar to Rawden, order confirmed. Case:—The respondents relied upon a settlement by apprenticeship alleged to have been gained by Thomas Oldfield in the appellant township. The indentures were not produced, but it was proved that they had been executed by Thomas Oldfield and his father and the master; and to prove the loss of the indentures, so as to let in parol evidence of the contents, the pauper Mary Oldfield was called by the respondents. The pauper stated, that a short time before her husband died, and during the illness which terminated in his death, she had some conversation with him about the indenture. She was then asked by the respondent's counsel what that conversation was. This was objected to on behalf of the appellants, but after argument the court decided that the evidence was admissible. She then stated that she had asked her husband what had become of his indentures, and he said that he had got them away from his master after the end of his apprenticeship, and had worn them in his pocket till they were all to pieces. Parol evidence was afterwards admitted of the contents. The question for the opinion of the court was, whether the above conversation was admissible in evidence or not. Lord Denman, C. J. "If the statement of the case was incorrect, it should have been set right before. This is at any rate a dangerous kind of evidence, and to be received with caution; and unless the requisite proof had been first given as to the possession of this indenture, the pauper's conversation on the subject was clearly not admissible. In *Rex v. Morton* (4 M. & S. 48, post, 575), inquiry had been made of the master's executrix for the indenture in question; here no such fact appears. The order of sessions must be quashed." Taunton, Patteson, and Williams, Js. concurred. Order of sessions quashed.

Rex v. Stoke Golding, 1 B. & Ald. 173. On an appeal against an order, the question was, whether one person only, or more than one, had been appointed overseer in a particular year? the respondents, who in order to vacate an indenture of apprenticeship, had to prove that only one overseer had been appointed in that year, had given notice to the appellants to produce all books and writings in their custody and power relating to the appointments of overseers; the appellants being called upon to produce under this notice, produced one parish book, which was the only one in existence, and the parish officer who produced it, proved that no appointments were kept by the parish: the respondents then proceeded to inquire of a witness as to there having been in the particular year one or more overseers; but on an objection being taken, the sessions held, and K. B. confirmed their opinion, that as the appointments had been in writing, parol evidence could not be admitted. "The question," said Lord Ellenborough, "is, whether the justices below have done wrong in rejecting the parol evidence? This is clear that the parol evidence could not be admitted until the case was ripe for the admission of secondary evidence; now it could not be considered as ripe for that purpose until the respondent parish had exhausted all the proper means of procuring the primary evidence. Have they done this? First, as

to the appointment itself, they gave a notice to the parish; and supposing the parish had the actual custody, that notice would have been sufficient, but this does not appear. Have they then the legal custody? Certainly not, for the legal custody is in the officer who is the person most interested in the instrument, and who requires its production as a sanction for those acts which he may be called upon to do under its authority. Now here there has not been any notice to the overseer himself. I think therefore that as in this case there has been omission of the means of exhausting the primary evidence, recourse could not be had to that of a secondary nature." *Holroyd, J.* "The law presumes the appointment to be in the custody of some of the overseers, who are responsible for the acts done under it. Notice therefore should have been given to him."

Rex v. Morton, 4 M. & Sel. 48. It appeared that only one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an inquiry for it had been made of the pauper shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it, and an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it; no evidence was given of any search made by any one, either amongst the papers of the master, or of the pauper. The Court of K. B. were of opinion, that a sufficient inquiry had been made to render parol evidence of the contents admissible; and the distinction made between this case and *Rex v. Castleton* (*ante*, 573) was, that in that case there was evidence of a fact which made a further search necessary; but that in this case the same information which traced the instrument into the pauper's possession, plainly showed that any further search would have been nugatory. Here there was no proof that the instrument ever existed in the possession of the pauper, unless his declaration could be taken as evidence; and if it could, he declared in the same breath that it existed no longer. When therefore the pauper, by whose information alone the parties were acquainted with the fact of his having had the instrument in his possession, at the very same time declared that it was destroyed, it became unnecessary to search among his papers.

Rex v. Piddlehinton, 3 Bar. & Adol. 460. On appeal against an order for the removal of John Northover from the parish of Piddlehinton to the parish of Charminster the sessions quashed the order. Case:—The respondents proved that the pauper thirty years ago was apprenticed to John Fowle of Charminster by a deed of only one part, which, on being executed, was carried away by Fowle. The pauper served as apprentice to Fowle in Charminster about a year, when Fowle failed in business, gave up his premises, and passed the remaining years of his life in a lodging at Charminster supported by his friends. Upon the failure of Fowle, Mr. Sabine, an attorney of Dorchester, had the management of all his affairs and the custody of all his books and papers. He looked over the books and papers relating to Fowle's accounts shortly after his failure, and did not find any indenture. Fowle left no child. His widow quitted the neighbourhood of Charminster about 1821. A witness had called upon and seen her in London about a year before the trial of the appeal, and did not know that she was not still resident there. It was objected, that this proof was not sufficient to let in secondary evidence of the indenture; but the sessions were of a different opinion: and parol testimony was then given that the pauper was duly bound apprentice to Fowle. The appellants then gave the following evidence to show a subsequent settlement in Stratton. On the 13th October, 1813, J. Browne and his wife, in consideration of 40*l.*, demised to William Northover, the pauper's father, a cottage in the parish of Stratton, Dorsetshire, for sixty years. The pauper, by a verbal agreement with his father, who owed him 24*l.*, was put into the possession of and received the rents of the cottage for three years, 3*l.* for the first year and 5*l.* for the two next years. At the end of which term, by indenture dated the 4th of November, 1816, between the said W. Northover of the first part, the pauper of the second part, and one Thomas Bowring of the third part, reciting the deed of October, 1813, and

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Proof of loss of indenture.

Search for indentures after master's death when secondary evidence admitted. A father, in consideration of natural affection and of 24*l.* which he owed his son, made over to him premises in the parish of S. by verbal agreement only, and the son received the rents for three years, residing in S.: It was held, that the son was a purchaser for less than 30*l.* within 9 G. 1, c. 7, s. 5, and gained no settlement.

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that the father, since the delivery and execution thereof, had, in consideration of his natural love and affection to his son (the pauper), and also in liquidation of a certain debt due to him, verbally, and without any assignment or conveyance, given to his son the said cottage, and put him in possession of the rents, and that the pauper had contracted to sell the premises to the said J. Bowring; the father, by the direction, approbation, and consent of the pauper, in consideration of 25*l.*, assigned and conveyed the said cottage to Bowring, and the pauper ratified and confirmed the conveyance. The father and the pauper joined in the usual covenants to the purchaser. The pauper received the 25*l.* purchase money from Bowring. During the three years above mentioned, the pauper resided in the parish of Stratton; and upon this evidence the sessions were of opinion that he had gained a settlement there. *Per curiam* (Lord Tenterden, C. J., Littledale, Parke and Patteson, Js.), "That is where there has been an actual conveyance. Here there was none, and the pauper could not ground an equitable interest on natural love and affection; such interest, if he had any, must have rested on the pecuniary consideration, and that was below 30*l.*" Order of sessions quashed.

It has been observed, that parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the court; as that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

If it appear by cross-examination, or otherwise, that the lost or destroyed indenture was never legally stamped, then, although the fault was attributable to the party making the objections, it cannot be proved (*Rex v. Castle Morton*, 3 B. & Ald. 588; *Rippiner v. Wright*, 2 Bar. & Ald. 478), unless the loss or destruction was within the time allowed for stamping; (*Bousfield v. Godfrey*, 5 Bing. 418.)

In *Gordon v. Secretan*, 8 East, 548, Lord Ellenborough, C. J. said, "that *Rex v. Middlezoy*(a), which was much questioned at the time, had been since over-ruled; and that it was not enough to give notice to the opposite party in a cause to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice; but that the production of it at the trial, in pursuance of such notice, did not supersede the necessity of proving it by one of the subscribing witnesses, if any, as in ordinary cases." And Lawrence, J. said, "that it had been so decided by Lord Kenyon in case of a will, which the adverse party, in whose hands it was, had notice to produce and did produce, that the party calling for it was bound to prove it by calling one of the subscribing witnesses."

See also *Pearce v. Hooper and others*, 3 Taunt. 62; and *Orr v. Morice*, 3 Br. & B. 139.

Rex v. Stourbridge, 8 B. & C. 96; 1 M. & R. Mag. Ca. 297. George Layton removed from Bromsgrove to Stourbridge. Order confirmed. Case:—The mother of the pauper proved that about twenty-four years ago she received some money from the overseers of Stourbridge to put her son out apprentice, and that she accordingly put the pauper, at the age of about seven years, apprentice to William Clay, of Bromsgrove, who was her brother-in-law; that the indenture was signed by her, the pauper, and the master, who had it filled up; that she gave the indenture to Nanny Badger, to take to Stourbridge to the overseers who had given her the money to pay for the stamp for it; that it was directed to the overseers of Stourbridge; that N. B.'s husband was a market gardener, and used to attend Stourbridge market; that sometimes he and sometimes his wife went to the market;

Execution of an indenture must be proved by the party calling for it, though it come out of the hands of the adverse party.

Where it appeared that an indenture of apprenticeship, twenty-four years old, the expenses of which the overseers had paid, was sent to those overseers, and was not to be found in the parish chest: Held, that it might be presumed to be lost,

(a) Where a contrary doctrine had been held.

and the indenture was to be carried to the overseers either by the husband or the wife, when they went to the market; that both N. B. and her husband were since dead, but that she had survived her husband; that she did not know whether N. B. had left any will, but she had heard that she had. It was further proved by an overseer of Stourbridge, that he had searched diligently in the chest where the papers of the township are kept for the indenture, but had not been able to find it; and that he had applied to the executor of the husband of N. B., who had informed him that the indenture had never come to his hands, and that he was certain that no such paper was in the husband's possession when he died. Secondary evidence was then offered of the due execution and contents of the indenture; but the evidence was disallowed. Lord Tenterden, C. J. "The question is, whether there was such reasonable evidence of the indenture having been lost as entitled the appellants to give parol evidence of its contents? Considering the nature of the instrument, and the circumstances of the case, I am of opinion that there was. It seems to me, that if care had been taken to preserve the indenture, it would have been deposited in the parish chest, and there found; and that not being found there, the fair presumption is that it was lost. If we were to hold otherwise, and were to require the sort of proof which it has been contended ought to have been adduced, it would be necessary, in such a case, to produce not only the parish officers themselves for the year in which the binding took place, if living, or their representatives if dead, but the parish officers or their representatives for every year, no matter how many, between the date of the indenture and that of the inquiry. Such evidence would be endless and impracticable, and it would be unjust and absurd to require it. Upon this short ground, I am of opinion that the order of sessions is wrong." Bayley, J. "I am entirely of the same opinion. The parish chest was the natural and probable place for this indenture to be found in. Search has been made for it there, and it cannot be found. The only reasonable inference is that it is lost. Then parol evidence of its contents ought to be received. The case must be re-heard."

Rex v. St. Mary-le-Bone, 4 D. & R. 475; 2 D. & R. Mag. Ca. 325. John Pearce was removed from St. Paul, in Norwich, to St. Mary-le-Bone, Middlesex. Order confirmed. Case:—Pearce, when a boy, lived with one Benson, a shoemaker, in St. Mary-le-Bone, three years, and then ran away from him. To prove that the pauper resided as an apprentice, and to account for the non-production of the indentures, it was proved that a fire happened about twenty years ago in the apartment in which the pauper then resided, and burnt every thing he had; that the father and mother of the pauper were dead; that Benson and his wife are also dead; that Benson left no property at his decease; and that no relatives of his are to be found. T. Nash proved that he was apprentice to Benson at the same time with the pauper and another apprentice, and that he saw in his master's hand an indenture, which he understood to be the indenture of apprenticeship of the pauper; that the pauper, as well as the witness and the other apprentice, boarded and lodged in the master's house in St. Mary-le-Bone. Another witness stated, that he knew Benson at the time the pauper lived with him; that Benson had then two other apprentices, and called his apprentices lazy rascals. It further appeared that the pauper afterwards married, and that while living in St. Mary-le-Bone his wife was admitted into the workhouse of St. Mary-le-Bone, in a state of illness, and there died. *Rex v. St. Michael, Bath* (2 Bott, 459), was quoted, where, upon a question of the settlement of the family of a militia-man, it appeared by his examination, taken under the mutiny act, that he served J. M. as an apprentice five years and a half. His wife proved that he had run away, and she knew nothing of him. J. M. was dead. This was held reasonable evidence of a binding, and this point was not overruled in *Rex v. Clayton Le Moors*. Bayley, J. "I am of opinion, that the parol testimony admitted in this case was properly received, and that it was sufficient to found the presumption that an indenture was executed, and that the pauper's husband served and acquired a settlement under it. The general rule applicable to the doctrine of presumption is, that we are to

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and that secondary evidence of its contents was admissible.

After twenty years an apprenticeship presumed from the treatment of the pauper as an apprentice like the others, aided by the fact that his wife died in the parish workhouse. The loss of indenture presumed from circumstances.

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What is a diligent search for an indenture executed forty years since.

presume that which reasonably accounts for the actual existing state of things, and I think the presumption drawn by the sessions satisfies that rule. The facts in this case, unrefuted, appear to me conclusive. The pauper's husband lived with his master in the character of an apprentice, doing the same work, and receiving the same treatment, as his other apprentices did; and surely, after an interval of twenty years, it is not too much to presume that he really was an apprentice. With respect to proof of the destruction of the indenture, I think enough was given to let in the secondary evidence, and that the search at the stamp-office was quite unnecessary. It must not be forgotten, that the fact of the first wife of the pauper having been received into the workhouse of St. Mary-le-Bone, shows that that parish believed her husband to have been their parishioner, and that fact, coupled with the others I have alluded to, is, I think, decisive to show that he had acquired a settlement as an apprentice in that parish." *Holroyd, J.* concurred.

Rex v. East Farleigh, 6 D. & R. 147; 2 D. & R. Mag. Ca. 71. The facts of this case are fully stated in the judgment delivered by *Bayley, J.* "In this case there had been two parts to the indentures, which were executed so long since as 1788. The first part has been satisfactorily accounted for by Mrs. Buckley, the widow of Buckley, with whom the apprentice's father left it to be enrolled. She proved that after diligent search it was not to be found. The other part was originally in the possession of the second master, who said he had either delivered it to Buckley, or to his solicitors, Messrs. R. and T. Mrs. B.'s evidence satisfactorily shows that it was not amongst her husband's papers. The question then arises, whether, supposing it had been left with Messrs. R. and T., it has been satisfactorily accounted for. Messrs. R. and T. were in partnership until 1803, and if it was delivered to them, it must have been shortly after Tanner, the second master, received it from Ständen (the first master), which would be in 1793. The indenture would expire in 1795; and supposing it to remain in R. and T.'s possession after that, it would be no more than waste parchment. No beneficial object, either to the master or the apprentice, could be gained by preserving it. However, there is a possibility that it was preserved, though it is not easy to divine for what purpose. At the dissolution of the partnership between R. and T., the presumption is, that being an useless instrument, it would be destroyed, for no sensible reason can be suggested for its preservation. But assuming it to have been preserved by Mr. T., the question is, whether there has been any essential defect in the search made afterwards? Upon the death of Mr. T., Mr. Cutts, at that time clerk to Mr. H., the executor of Mr. T. received two boxes of papers belonging to the latter, amongst which this indenture was not to be found. It is suggested, that these were not all the papers of which he died possessed. There is certainly a possibility that there were others, but no question was put to Cutts upon the subject. If, however, there were none others, and the probability is that the fact was so, then it would have been useless to call Mr. H. to prove the same fact, which was established by Cutts. It seems to me, therefore, that considering the lapse of time which has occurred since the indentures were executed, and that every person has been called, in whose possession they might reasonably be expected to be found, such due diligence had been used to obtain the primary evidence without success, as ought to have let in the secondary evidence." *Littledale, J.* concurred. Order of sessions quashed.

An assignment by indorsement on the indenture must be stamped, or cannot be received in evidence, nor can parol evidence be received if the agreement was reduced to writing.

Rex v. St. Paul's, Bedford, 6 T. R. 452. C. Page removed from St. Paul's to Kempston. Order quashed. Case:—The pauper was bound an apprentice for seven years to W. Robinson, of Kempston, cordwainer; he served Robinson in Kempston near five years, when they removed together to Biddenham, where the apprentice continued with his master near a year, when his master died. About six weeks after, an agreement was entered into between S. Negus, executrix of W. Robinson, with J. Robinson, which was indorsed on the indenture, by which Negus assigned over the apprentice to J. Robinson for the remainder of the term, and J. Robinson agreed to teach the apprentice the same trade, and to provide for him to the end of the term. This agreement was signed by Negus and J. Robinson, but not stamp-

ed. Immediately after the assignment the pauper went into the service of J. Robinson, in Kempston, and continued there near a year. Lord Kenyon, C. J. "It has been settled ever since *Rex v. St. George, Hanover Square*, that if an apprentice serve a second master forty days with the express consent of the first, he gains a settlement in the parish where that service is performed; the first master has not indeed the absolute controul over the apprentice, so as to compel him to go to any part of the kingdom, and serve another master, but if he do serve a second with the consent of the first, it is sufficient; it must be with the consent of the first master, for it has been decided that his mere *knowledge* of such service will not answer the purpose. The question here is a question on evidence, whether the executrix of the master did or did not consent to the service with the second master? The sessions were of opinion, that the instrument which was produced to prove that consent could not be received in evidence, because it was not stamped, and therefore it becomes necessary to consider how far stat. 23 Geo. III. c. 58, affects this case. By that act all agreements are to be stamped, except they fall within the exceptions in the 4th clause. It is said that this person comes within some one of them; but he was not a *servant*; he had acquired another specific denomination, well known in the law, an *apprentice*. The exception clearly refers to cases where there is a *hiring*; but that was not the present case: '*hiring*' is not applicable with any propriety to the case of an apprentice. Apprentices and servants are characters perfectly distinct; the one receives instruction, the other a stipulated price for his labour. I think therefore that we should be doing violence to this act to determine that an apprentice comes within the terms in this clause of exception, and consequently the sessions did right to reject this instrument. And when an attempt was made to give parol evidence of the agreement, they also did right in refusing to receive it, because the agreement was reduced to writing. Without canvassing the other point, I am satisfied that the sessions were warranted in rejecting the agreement, and if so, there was no evidence to show any consent that the apprentice served the second master with the consent of the executrix of the first." *Grose and Lawrence, Js.* of the same opinion. Order of sessions confirmed.

Rex v. Skeffington, 3 B. & A. 382. In this case it was stated in the indenture that a premium had been paid out of a charitable donation to the parish: at the time of payment, the parish officers said it was charity-money. *Abbott, C. J.* "I think that the fund out of which the premium is said to have been paid was a public charity within the exception in the stamp act. But I think there is no sufficient evidence to show that the premium was in fact paid out of such a fund. It is stated, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground, I am of opinion that the indenture ought not to have been received in evidence." *Bayley, J.* "The respondents having proved a case of hiring and service, it became the duty of the appellants to show that there was at the time a subsisting valid apprenticeship. To do that, they produce an indenture which on the face of it purports that a premium has been paid, and which is not stamped. If that premium was paid out of a public charity, it was the duty of the appellants to prove that fact, which was within their knowledge, and of which the respondents could know nothing. An indenture of apprenticeship is no evidence of the facts recited in it; if it were, the party might always recite that a premium was paid out of a public charity, whether it were the fact or not. But it is said, that if the payment of the premium be proved by the indenture, the recital also becomes evidence. This answer is not sufficient, for independently of the indenture, there is direct evidence of the fact of payment." *Holroyd, J.* "If the recital and the decla-

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Hiring, in the stamp act, not applicable to an apprentice.

Recital in indenture is no evidence that the premium was paid out of charity money. The fact of payment must be proved *aliunde*.

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A married woman, on binding her son, an illegitimate child, an apprentice, agreed with the intended master that ten pounds should be the premium inserted in the indenture, but that he should receive something more. The husband of the mother of the apprentice paid the 10*l.*, and the mother, without the husband's knowledge, paid the master a further sum of two guineas and a half: Held, that there being no valid contract to pay more than the sum of 10*l.* the full sum received, given, paid, secured, or contracted for at the time of the execution of the indenture, was inserted in the indenture within the meaning of 8 Anne, c. 9, s. 39, that it was valid, and that a settlement was gained by service under it.

tion of the officers had been the only evidence of the fact of payment, I should have been of the opinion that there was sufficient evidence also that it was paid out of a public charity; but on looking at this case, it is clear to me that the fact was proved substantially by the master."

Rex v. Bourton-upon-Dunsmore, 9 B. & C. 872. H. Webb, &c. were removed from Stretton-upon-Dunsmore to Bourton-upon-Dunsmore. Order confirmed. The appellants admitted a *prima facie* settlement by birth in their parish, and then proved that the pauper had served more than forty days in a third parish, under an indenture of apprenticeship, bearing date the 26th of April, 1813. This indenture the respondents contended was void upon the following evidence. The mother of the pauper, who was an illegitimate child, was directed by her husband, who was not the father of the child, to give a premium of 10*l.* and no more. The master required 20*l.* This amount the mother refused to give, but came to a private understanding with the master that he should receive something in addition to the 10*l.*, but what particular sum did not appear. It was also agreed that the sum of 10*l.* only should be inserted in the indenture, which was accordingly done. The stepfather paid the premium of 10*l.* and the mother paid the further sum of two guineas and a half. Neither the apprentice nor stepfather was privy to the undertaking above mentioned, and never knew that a greater sum than 10*l.* had been paid, but the master was not aware that the agreement by the mother to give more than the 10*l.* was without the authority or privity of her husband. The indenture bore the proper stamp for any sum not exceeding 30*l.* *Bayley, J.* "The sum really and *bona fide* paid and contracted for was inserted in this indenture. There was no binding agreement for the payment of any sum beyond that amount. The promise made by the *feme covert* did not bind her." *Littledale, J.* "There was no valid contract by any person to pay more than the sum mentioned in the indenture. And assuming that the contract by the *feme covert* to pay a further sum was binding upon her, there was no contract by her to pay any specific sum. So that it was impossible to insert in the indenture the sum to be paid." *Parke, J.* "There was no contract to pay any specific sum beyond that mentioned in the indenture." Order of sessions quashed.

The other matters which may require to be proved under particular circumstances, will be found in the cases collected under this class of settlements, (*ante*, 506 to 519.)

An indenture not duly stamped is inadmissible (*ante*, 504), unless in some cases, as where it was lost before the time for stamping had expired. (*Bousfield v. Godfrey*, 5 Bing, 418; 3 M. & P. 771; *ante*, 496.)

Treatment by a party of a person as an apprentice, may be presumptive evidence of apprenticeship (*ante*, 514, 515.)

7. *Of Settlement by Renting a Tenement.*

Introductory observations, and division of the subject.

7. *Of Settlement by Renting a Tenement.*

The legislature considered that a person who was able *bona fide* to contract to pay 10*l.* a year as rent for an interest in real property, and resided in the parish for upwards of forty days, was a fit person to acquire a settlement in that parish, and that he ought not to be removeable therefrom; this was the foundation of this description of settlement. (*a*)

The law relating to this branch of settlements has within these few years undergone some very material alterations, as to the nature of the tenement, the contract of renting, and the performance of that contract by the party in respect of whose renting the settlement is claimed.

The law on this subject may be properly arranged under the following heads:—

1. *The Statutes relating to Settlement by Renting a Tenement.*
2. *What is a Tenement under 13 & 14 Car. II. c. 12.*

(*a*) *Kinver v. Stone*, 2 Stra. 678; *Rex v. Butley*, Burr, S. C. 167, (*post.*)

3. What is a Tenement under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
4. The Tenement need not be entire.
5. The Nature and Necessity of a Tenancy.
6. As to joint Tenants.
7. Permissive Occupation is a "Coming to Settle."
8. As to the Time for which the Contract must be made under 13 & 14 Car. II.
9. The Tenement must be hired for a year under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
10. The Hiring must be bona fide by the pauper, under the same statutes.
11. The Value under 13 & 14 Car. II. c. 12.
12. The Value under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
13. The Rent must be paid under the same statutes.
14. Occupation under 13 & 14 Car. II. c. 12.
15. Occupation under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
16. The Parish in which the Tenement must be situate under 13 & 14 Car. II. c. 12.
17. The Parish in which the Tenement must be situate under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
18. Who may acquire this Settlement.
19. Residence under 13 & 14 Car. II. c. 12.
20. Residence under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18.
21. The Occupier must have been rated to and paid the Poor Rate, under 4 & 5 Will. IV. c. 76, s. 66.
22. Evidence relating to this Settlement.
23. Fraud.

1. Statutes relating to Settlement by Renting a Tenement.

1. THE STATUTES RELATING TO SETTLEMENT BY RENTING A TENEMENT.

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| 13 & 14 Car. II. c. 12. | 3 Geo. IV. c. 126. |
| 9 & 10 Will. III. c. 11. | 4 Geo. IV. c. 95. |
| 23 Geo. III. c. 23. | 6 Geo. IV. c. 57. |
| 52 Geo. III. c. 78. | 1 Will. IV. c. 18, s. 1 & 2. |
| 54 Geo. III. c. 170. | 4 & 5 Will. IV. c. 76, s. 66. |
| 59 Geo. III. c. 50. | |

1. The Statutes relating to Settlement by Renting a Tenement.

The 13 & 14 Car. II. c. 12, s. 1. "Whereas the necessity, number, and continual increase of the poor, not only within the cities of London and Westminster, with the liberties of each of them, but also through the whole kingdom of England, and the dominion of Wales, is very great and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor: For remedy whereof, and for the preventing the perishing of any of the poor, whether young or old, for want of such supplies as are necessary, may it please your most excellent majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks where it is liable to be devoured by strangers; be it therefore enacted by the authority aforesaid, that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the *quorum*, of the division where any person or persons that are

13 & 14 Car 2, c. 12.

Persons coming to settle in tenements under ten pounds a year, are removeable to place of legal settlement.

1. *Statutes relating to Settlement by Renting a Tenement.*

13 & 14 Car. 2, c. 12.

Persons grieved may appeal to quarter sessions.

Persons going to work in harvest, &c., with a certificate.

likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

Sect. 2. "That all such persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county at their next quarter sessions, who are hereby required to do them justice according to the merits of their cause."

Sect. 3. "That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a *certificate* from the minister of the parish and one of the churchwardens, and one of the overseers of the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise, as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases above said, but it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

9 & 10 W. 3, c. 11.

No certificated person to gain a settlement unless by *bonâ fide* taking a lease of a tenement of value of ten pounds, or execute an annual office in the parish.

The 9 & 10 Will. III. c. 11. "Whereas in and by a certain act made in the last session of this present parliament, intituled, '*An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom*,' it was, amongst other things therein contained, enacted, 'That if any person or persons whatsoever, from and after the first day of May, in the year of our Lord one thousand six hundred and ninety-seven, shall come into any parish or place, there to inhabit and reside, should at the same time procure, bring, and deliver to the churchwardens or overseers of the poor of the parish or place where any such person should come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place; every such certificate, having been allowed of and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place from whence any such certificate shall come doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the certificate, with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place to which such certificate was given; and that then, and not before, it should and might be lawful for any

such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought: and whereas some doubts have arisen upon the construction of the said act, by what acts any person coming to inhabit or reside within any parish, by virtue of any such certificate as aforesaid, may procure a legal settlement in such parish, and whether such certificate did not amount to a notice in writing, in order to gain a settlement: for explaining thereof, and of the said act, be it therefore enacted, that no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

The 23 Geo. III. c. 23, s. 1, enacts, "That no person or persons whomsoever, now a prisoner or prisoners, or who shall hereafter become a prisoner or prisoners in the King's Bench prison, or the rules thereof, shall gain or be adjudged or deemed to gain a settlement in the said parish of St. George the Martyr, in the borough of Southwark, in the county of Surrey, by renting a house, part of a house, lodging, furnished or unfurnished, or any other premises whatsoever within the said parish, or by being rated to and paying any rates or taxes for the same, whilst he, she, or they shall be such prisoner or prisoners: nor shall any person or persons gain, or be adjudged or deemed to gain, a settlement within the said parish, by, or by reason or on account of living, or having lived or resided with any prisoner or prisoners within the said prison or the rules thereof, as or in the capacity of a hired servant; any law, statute, usage, or custom to the contrary notwithstanding."

The 52 Geo. III. c. 72, s. 8, enacts, "That no person or persons shall, by residence in any house, lodge, or other building erected or to be erected within the said forest of Alice Holt, in the county of Southampton, or by hiring and service, either for the preservation of the said woods or plantations, or the game in the said forest, gain thereby any settlement in the parish of Binstead, in the said county in which the said forest is situated."

The 54 Geo. III. c. 170, s. 5, enacts, "That no gate-keeper or toll-keeper of any turnpike road or navigation, or persons renting the tolls and residing in any toll-house of any turnpike road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet."

The 59 Geo. III. c. 50, which received the royal assent on the 2nd of July, 1819, recites, "Whereas many disputes and controversies have arisen respecting the settling of poor people in parishes in England by the renting of tenements," and enacts "that no person shall acquire a settlement in any parish or township maintaining its own poor in England, by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling house or building, or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same; nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary in any wise notwithstanding."

The 3 Geo. IV. c. 126, s. 51, enacts, "That no collector or person renting such tolls, or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person shall thereby gain a settlement in any parish or place whatsoever; and that no tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same, nor any person in respect of such tolls or toll-house, shall be rated or assessed

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23 Geo. 3, c. 23. Prisoners in K. B. gain no settlement by renting a tenement or payment of rates; nor their servants by residence.

52 Geo. 3, c. 72. Residence in forest of Alice Holt not to gain a settlement in Binstead.

54 Geo. 3, c. 170. Tolls and gate-keeper of navigation.

59 Geo. 3, c. 50. Settlement shall not be acquired by renting any tenement, except a house or land in the parish, of the actual annual value of ten pounds, held, and rent paid for a year.

3 Geo. 4, c. 126. No person to gain a settlement by renting tolls, or by residence in toll-houses.

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4 Geo. 4, c. 95.
Receiver of tolls for overweight.

6 Geo. 4, c. 57,
repeals 59 Geo. 3,
c. 50, as relates
to settlement by
renting tenements.

Requires a renting
of building or land
for a year, at 10*l.*
per annum, ac-
tually paid, &c.:
not to be neces-
sary to prove
value.

1 Will. 4, c. 18,
amends 6 Geo. 4,
c. 57.

towards the payment of any poor's rates or any other public or parochial levy whatsoever."

The 4 Geo. IV. c. 95, s. 31, enacts, "That no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, and no apprentice or servant of any such collector or receiver shall thereby gain a settlement in any parish or place; and that no tolls or penalties for overweight to be taken at any house or weighing machine erected or to be erected, or adjoining to any turnpike road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates or any other public or parochial rate or levy whatsoever."

The 6 Geo. IV. c. 57, s. 1, which received the royal assent on 22 June, 1825, recites, "Whereas the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates: and whereas the ascertaining such value in such respective cases has given rise to very expensive litigation: and whereas doubts have been entertained whether an act made in the fifty-ninth year of King George the Third, intituled, 'An Act to amend the Laws respecting the Settlement of the Poor, as far as regards renting Tenements,' has been effectual for the purpose of altering the law in respect of the necessity of proving the annual value of tenements so rented: and it is expedient that further provision be made relating thereto; be it therefore enacted, That from and after the passing of this act, the said recited act of the fifty-ninth year of the reign of King George the Third, intituled, 'An Act to amend the Laws respecting the Settlement of the Poor, so far as regards renting Tenements,' shall be and the same is hereby repealed."

Sect. 2. "That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person, in such parish or township, at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of ten pounds, actually paid, for the term of one whole year at the least: provided always, that it shall not be necessary to prove the actual value of such tenement; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding."

The 1 Will. IV. c. 18, which received the royal assent on the 30th March, 1831, recites, "Whereas by an act passed in the sixth year of the reign of his late Majesty George the Fourth, intituled, 'An Act for the amendment of the Law respecting the Settlement of the Poor, as far as regards renting Tenements and paying Parochial Taxes,' it was among other things enacted, 'That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township, at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of ten pounds actually paid for the term of one whole year at the least: provided always, that it shall not be necessary to prove the actual values of such tenements; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding: and whereas doubts have arisen with respect to the intentions of the legislature concerning the occupation of such house, building, or land by the person hiring the same, and concerning the amount of the rent to be paid

and the person paying the same: and whereas it is expedient that such doubts should be removed; be it therefore enacted, that from and after the passing of this act, no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said act expressed, unless such house or building, or land, shall be actually occupied under such yearly hiring, in the same parish or township, by the person hiring the same, for the term of one whole year at the least, and unless the rent for the same, to the amount of ten pounds at the least, shall be paid by the person hiring the same."

Sect. 2. "That where the yearly rent shall exceed ten pounds, payment to the amount of ten pounds shall be deemed sufficient for the purpose of gaining a settlement under the said recited act."

4 & 5 Will. IV. c. 76, s. 66. "That from and after the passing of this act no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and shall have paid the same in respect of such tenement for one year." (a)

Rex v. Streatham, 2 M. & Sel. 468. By an act for regulating the parish of Clapham, a clause was introduced which Lord *Ellenborough* characterized as being a fraud upon all other parishes, viz. that no settlement could be gained in any house of less yearly value than 20*l.*, let for any shorter period than quarterly, where the landlord compounded for, or refused to compound for his rate. It was held, on the construction of this statute, that this must be strictly confined to the cases mentioned, and did not apply to all houses under 20*l.*

There are some cases which explain the general effect of these statutes upon each other.

Rex v. St. Mary-le-Bone, 4 B. & Ald. 681. Removal from St. Mary-le-Bone to St. Pancras. Order discharged. Case:—The pauper hired an unfurnished shop in St. Pancras, of the yearly value of 10*l.*, and lived therein eight months. He afterwards hired an unfurnished shop and parlour, part of a house in St. Mary-le-Bone, at 26*l.* a-year, which he took possession of on the 25th May, 1819, and resided in and occupied the last mentioned premises upwards of forty days, but only thirty-eight days of such residence and occupancy had elapsed on the 2nd July, 1819. *Bayley*, J. "The question in this case turns entirely upon the construction of the 59 Geo. III. c. 50, which took effect from the 2nd July, 1819. The pauper had on that day resided in and occupied, for a period of thirty-eight days, part of a dwelling-house in Mary-le-Bone parish, at 26*l.* a-year; so that, if the statute had not been passed, he would undoubtedly have acquired a settlement in Mary-le-bone by his subsequent residence and occupation, which in the whole considerably exceeded forty days. But he had not on the 2nd of July acquired such settlement. It was contended, that the statute, being wholly expressed in the future tense, did not apply to such a case, but must be considered as wholly and absolutely prospective, and confined to tenements hired after the day on which the statute took effect. If this be the true construction, then a residence of one day prior to the statute, connected with a continued residence in pursuance of the original hiring for thirty-nine days after the statute, will confer a settlement. The statute, however, had in view, as appears by the preamble, the preventing of the disputes and controversies which had arisen respecting the settlement of poor people by the renting of tenements. And we think this object will be best attained by giving to the words of the enacting part their full and absolute effect, and by considering the statute as applicable to every case

1. *Statutes relating to Settlement by Renting a Tenement.*

No person shall acquire a settlement by reason of a yearly hiring of a tenement, or of land, unless he shall actually occupy the same.

Payment to the amount of 10*l.* shall gain a settlement.

The 4 & 5 Will. 4, c. 76, s. 66, requires a rating to and payment of poor rate by pauper.

Construction of the acts.

Construction of local act, as to tenements of twenty pounds a-year.

To gain a settlement under 13 & 14 Car. 2, the residence must be complete before July 2, 1819, the date of 59 Geo. 3.

(a) By s. 68 of the same statute, no person can retain a settlement gained by possession of any estate or interest in any parish longer than he inhabits within ten miles thereof. The legislature pro-

bably did not intend that this section should apply to this class of settlement, although the settlement is gained by virtue of an interest in his parish.

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The taking, if consistent with 6 Geo. 4, may be made before it.

No settlement will be gained where a pauper rented a tenement partly before and partly after the passing of 6 Geo. 4, c. 57, unless the provisions of 59 Geo. 3, are complied with, nor will a settlement be gained where the pauper rented land from Michaelmas, 1824, to Michaelmas, 1825, if during part of the time the land is in the occupation of another person.

within its scope, wherein a previous settlement had not been completely gained and established before the statute was passed. A contrary construction might open the door to many disputes and controversies as to the nature and effect of inchoate titles. Whereas, according to the construction which we adopt, the only enquiry hereafter will be, whether a settlement had been acquired *before* the 2nd July, and the case will be considered as if the pauper had died or removed from the tenement on the first day of that month, and as if he had resided *on*, but not *after* that first day of July." Order of sessions quashed.

Rex v. Ditchet, 9 B. & C. 981; 4 M. & R. 151. Bayley, J., said, "As to the question whether the holding before the 6 Geo. IV. c. 57, and the holding subsequent to that period, can be connected, I am of opinion they may, provided the occupation before be such as will satisfy the 6 Geo. IV.; and therefore if a party, before 6 Geo. IV. began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite to gain a settlement, a settlement will be gained. There are no words in 6 Geo. IV. which import that the taking shall be subsequent to the time at which that statute came into operation."

Rex v. Ockley, 1 Bar. & Adol. 818. Appeal against an order of removal. Case:—In the year 1824 the pauper rented a dwelling-house, garden, and meadow, in the parish of Dorking, at 7*l.* per annum, and continued to occupy the premises till Michaelmas, 1826. At Michaelmas, 1824, the pauper took four fields of meadow or pasture land, situate in the same parish, of Mr. Arthur Dendy, under an agreement, whereby Dendy covenanted, &c. with Wonham, to let him have the grass growing on ten acres of meadow land situate at Coldharbour, Surrey, from Michaelmas, 1824, to Michaelmas, 1825, in consideration of the sum of 8*l.* 10*s.* payable by Wonham to Dendy on or before Lady-day, 1825, and a further sum of 8*l.* 10*s.* payable in like manner on or before Michaelmas-day, 1825. In pursuance of this agreement, the pauper entered into possession of the fields at Michaelmas, 1824, dressed them, and turned his cattle upon them; but in April, 1825, having been compelled to sell his stock, and having none from that time to put in the fields, he agreed with his brother-in-law, Hills, to let him take the grass for the remainder of the term, upon payment of the rent from that time by Hills to Dendy; but Dendy was not aware of this agreement. In pursuance of such agreement, Hills stocked the fields, cut and carried away the crops, and enjoyed them until Michaelmas, 1825, when he went to Dendy and offered to pay him the rent; but Dendy refused to take it unless the pauper was present, and accordingly the pauper and Hills afterwards went together to Dendy, and Hills paid the rent in the presence of the pauper, and Dendy gave the pauper a receipt for the same. The whole rent stipulated for by the agreement in August, 1825, was paid. The question for the opinion of this court was, whether, under the above circumstances, the pauper gained a settlement in the parish of Dorking, by renting a tenement under the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. Lord *Tenterden*, C. J. "We are not called upon to say what would be the effect of the 6 Geo. IV. c. 57, as connected with the 59 Geo. III. c. 50, if the pauper had continued until the repeal of the last mentioned statute, doing all the things thereby required. Here, the pauper had not only not gained a settlement by complying with the provisions of that act, when the new statute passed, but he was not in progress of gaining one, for he had ceased to occupy before the expiration of the year's tenancy. Unless therefore the 6 Geo. IV. c. 57, had passed he never could have gained any settlement. Now that statute cannot have the effect of making that a good settlement which would not have been good within the 59 Geo. III. c. 50, if that act had continued in force. Besides, I must say, I do not think the statute 6 Geo. IV. c. 57, can be retrospective in part, but not so for all purposes. The order of sessions must be confirmed." *Littledale*, J. "We are not called upon to say whether the pauper would have gained a settlement if he had continued until the 6 Geo. IV. c. 57, to do every thing which the 59 Geo. III. c. 50, required to be done; because, here, the pauper was not in progress towards gaining a settlement at the

time when the last statute passed. That being so, I think that that which would not have been a good settlement if the 59 Geo. 3, c. 50, had continued in force, is not rendered good by the subsequent statute." *Taunton, J.* "It is conceded that the pauper in this case did not comply with the provisions of the 59 Geo. III. c. 50, so as to gain a settlement under that statute. The provisions of that statute continued to be the law till the passing of 6 Geo. IV. c. 57. If no settlement therefore could be gained within that statute, I cannot understand how the 6 Geo. IV. c. 57, can govern the gaining of a settlement under hiring and renting which began at Michaelmas, 1824. To say that a settlement was gained by virtue of a statute which had not begun to operate, would extend the 6 Geo. IV. c. 57, over a period governed by another statute, and would give it not only a retrospective, but a suspending operation. But as there had ceased to be even an inchoate settlement, before the 59 Geo. III. c. 50, was repealed, I think it is impossible to maintain that a settlement was gained by virtue of the provisions of the 6 Geo. IV. c. 57, which did not begin to operate till the pauper's occupation had been discontinued." *Patteson, J.* "There was an interval between Michaelmas, 1824, and June, 1825, when there was not an occupation by the pauper sufficient to satisfy the existing law; and that defect cannot be supplied by a subsequent statute. The order of sessions, therefore, must be confirmed." Order of sessions confirmed.

1. Statutes relating to Settlement by Renting a Tenement.

In *Rex v. Carshalton*, 6 B. & C. 93; 9 D. & R. 132; it was urged, that as the 6 Geo. IV. c. 57, recited the 59 Geo. III. c. 50, and then repealed that statute, without making any provision for such cases as might arise in the interval between the passing of the two acts, the 59 Geo. III. operated *pro tanto* as a repeal of the 13 & 14 Car. II., which conferred a settlement by a residence of forty days on a 10*l.* tenement. Then, as the pauper resided for forty days on a 10*l.* tenement in the interval between the two statutes alluded to, he gained a settlement under the 12 & 13 Car. II. which thus became revived. *Bayley, J.* "See the extent to which that argument might be pushed. Suppose, by a statute of Elizabeth, it was made felony without benefit of clergy to steal to the value of 40*s.* in a shop; that by the 10th Geo. III. the same offence was made clergyable, and that by the 20th Geo. III. the 10th Geo. III. was repealed; then, according to your argument, an offence of that description, which was committed between the passing of the two latter acts, but not brought to trial till after the repealing act passed, would be an offence not clergyable."

The repeal of 59 Geo. 3, does not operate as a reviver of 13 & 14 Car. 2.

2. What is a Tenement under 13 & 14 Car. II. c. 12.(a)

It is necessary to retain the old cases relating to this act, because the 59 Geo. III. c. 50, did not affect the acquisition of settlements by the payment of parochial taxes in respect of a tenement of the value of 10*l.*

2. What is a Tenement, &c.

An incorporeal hereditament is a tenement within the meaning of the statute, *Rex v. Piddletrenthide*, 3 T. R. 772; *Rex v. Hollington*, 3 East, 113; *Rex v. Chipping Norton*, 5 East, 239.

Incorporeal hereditaments.

Kinver v. Stone, 2 Stra. 678. A special order of sessions stated, that the pauper rented a coney warren and a cottage upon it at 10*l.* a year. By the court: "A mill hath been hld to be a tenement within the statute, and why not this? It is his ability to pay 10*l.* a year, that is the foundation of the settlement; and whether he pay it for a house of habitation, or for a warren which brings him in a profit, is not material." [See also S. P. *Rex v. Piddletrenthide*, post, 593.]

A coney warren is a tenement.

Rex v. Old Alresford, 1 T. R. 358. Removal from Old Alresford to Chilton Candover quashed. Case:—The pauper and his father resided in Old Alresford, under a certificate from Chilton Candover; the father rented a house and piece of land for several years at 3*l.* a year in Old Alresford, and during two years he held under a parol agreement the fishery of

A fishery is a tenement, and will confer a settlement.

(a) See the division of the subject, ante, 580, 581, and the note in Chitty's Col. Stat. vol. i. p. 776.

2. *What is a Tenement.*

*Alresford pond, with the grates, &c., containing about sixty acres, and also the spearsedge, flags, and rushes growing in and about the said pond, and the right of cutting the sedge growing on a piece of rough meadow, containing seven acres, not part of the pond, for which the father paid Mr. Edwards 10*l.* a year, and supplied his house with fish. During the time the father held the premises of E. he rented under a parol demise the fishery of Causeway river in New Alresford, with the grates to a fish-house there, at 3*l.* a year. The house and piece of land first mentioned, and the right of cutting sedge, &c., on the seven acres of rough meadow ground, and the fishery, &c., last mentioned, were together of the annual value of 10*l.*, without taking the pond, or any thing thereto belonging, into the account. Lord Mansfield, C. J. "Upon this state of the case, the court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute." Ashhurst, J. "There is no doubt but a fishery is a tenement. Trespass will lie for an injury to it, and it may be recovered in ejectment." Buller, J. "The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement."*

Liberty granted by a corporation to take sand and gravel from the bed of a river, was held a tenement, and a settlement conferred.

Rex v. All Saints, Derby, 5 M. & Sel. 90. A pauper, by order of a corporation, made at a common hall, was allowed the liberty to take sand and gravel from the bed of a river, (of which the corporation were entitled to the soil), with a condition that he sold the sand to the inhabitants of the town at a certain rate; for which liberty he paid to the corporation at the rate of 10*l.* per annum. Lord Ellenborough, C. J. said, "This was a tenement as it subsisted in the corporation, and the pauper is, by their permission, let into the enjoyment of it. I do not know that we are obliged to go into the title; certainly a corporation cannot demise, except by deed; but we find the pauper in the occupation of the land by their permission, and this occupation must, by fair intendment, be taken to have been an exclusive one, for otherwise it would have been reduced to a thing of no value; the corporation could not have used the land without interfering with the pauper's right. (a) The pauper seems to have been in the pernancy of the whole profits of the land; he took all which covered the surface of the land. It is, therefore, as much a tenement as *prima tonsura*. If the question turned upon the demise, I should feel difficulty; but I think, that in point of pernancy and enjoyment, this must be considered as a tenement."

A cattle-gate is a tenement.

Rex v. Whixley, 1 T. R. 137. Removal from Whixley to Healough quashed. Case:—The pauper served an apprenticeship to R. P., in Whixley, residing there under a certificate. In the two last years of his apprenticeship his master rented a dwelling-house, &c., of the value of 1*l.* 1*l.* 6*d.* a year, and a meadow of 7*l.* 10*s.* a year; and at the same time (viz. for those two years) he occupied two cattle-gates of the value of 1*l.* 4*s.* a year, in a stinted pasture, on consideration that he should keep in repair the common highway-gates, which the persons having a right to the cattle-gates were bound to sustain. It was urged that these cattle-gates are not like commons. They are conveyed by lease and release. The owners of them are tenants in common, they have a joint possession and several inheritance, and are as much demisable as any several tenement whatsoever. It was answered, that he occupied those cattle-gates on condition of keeping the highway-gates in repair, and that this was only a license to depasture his cattle, in consideration of his keeping the said gates in repair. Lord Mansfield, C. J. said, "these cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds, they are therefore to be considered as a tenement within the statute."

Renting a right of common in gross is a tenement.

Rex v. Dersingham, 7 T. R. 671. Removal from Ingoldesthorpe to Dersingham confirmed. Case:—The pauper, in June, 1795, went to reside at Dersingham, in a house with half an acre of land, and the going of two cattle on D. common, which he hired of one Pretty, at the rent of 6*l.*, till

(a) Upon this point see *Rex v. Trent and Mersey Navigation Co.* tit. *Rate*, ante, 141.

the Michaelmas following: he continued to occupy the same till the succeeding Michaelmas, at 8*l.* a year. In June, 1795, he hired of one Smith the going for three other cattle upon the same common till the Candlemas following, at the rent of 1*l.* 11*s.* 6*d.*, and of one Chadwick the going for one other cattle on the said common for the same time, at the rent of 10*s.* 6*d.* The common rights in question were rights of common in gross. The whole rent paid was 10*l.* 2*s.* for the year. Lord *Kenyon*, C. J. "It appears that the rights of common were rights of common in gross, and that puts an end to the question. A common in gross is a matter of tenure. Lord *Coke* says that a *præcipe* will lie for it. And there is no doubt but that the pauper rented those rights of common." Order of sessions confirmed.

Evelyn v. Rentcombe, 2 *Salk.* 536. Case was drawn up for the opinion of the court, whether renting of a water-mill of 10*l.* a year would make a settlement? And by the whole court, "Clearly a mill is a *tenement*, and the renting therefore must gain a settlement within the statute; that is, if the party live therein, or within the parish."

Rex v. Butley, 1 *Sess. Ca.* 320; *Burr. S. C.* 107; 2 *Bott*, 125. The question was, whether renting a *wind-mill* at 14*l.* a year gained a settlement, it having been determined that a water-mill did. By the court. "It is the same as if he had rented land of that value."

Rex v. Minchin-Hampton, 2 *Bott*, 128; 2 *Sess. Ca.* 320; 2 *Stra.* 874; *Burr. S. C.* 316. The pauper rented, in the parish of Bisley, lands of the yearly value of 8*l.*, from his father; a house, of the yearly rent of 1*l.* 10*s.*, from his uncle; and the same year took the pasture of a piece of land, in the said parish, from All Saints day to Candlemas, and paid 12*s.* for the same, which piece of land was worth 6*l.* a year. It was urged, that this was a good settlement. But the Court of King's Bench held, that taking the pasture of a piece of land was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had taken a pasture ground for three months, that would have made a good settlement. But the case went off upon another point. viz. for want of an adjudication.

Rex v. Stoke, 2 *T. R.* 451. Case:—The pauper, in addition to a house and land in Barlaston, took the hay-grass and aftermath of a meadow for 2*l.* 5*s.* 6*d.* for ten months, in the same parish. He paid no taxes, but he fenced the meadow and spread the hillocks. It was said, that the agreement for the hay-grass and aftermath conveyed no interest in the soil, so as to give the pauper a settlement; that he derived from the contract a mere personal right to take the hay-grass and aftermath; that he was to take, not the general, but only the particular profits of the land; that *Co. Litt.* 4 *b.* took the distinction between *pasturam* and *pascuum*; by the former the ground itself passes, but the latter conveys no interest in the soil. *Ashhurst*, J. "It is clear, from the stating of the case, that the land was intended to pass; it states, 'that for ten months the pauper took the hay-grass and aftermath of the meadow.' Now why should he have taken it for ten months if the soil was not intended to be conveyed? there could be no other profits of this ground but the hay-grass and aftermath; and if a man grant all the profits of the ground, he grants the land itself." *Buller*, J. "This is like the case put in *Co. Litt.* where *pastura* carries the land itself. The pauper was to have the hay and aftermath, which was all the produce of the soil. This is not like taking hay-grass after severance, for that is only a chattel; but here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that he was to have every thing that grew on the land for ten months."

Rex v. All Saints, Cambridge, 1 *B. & C.* 23; 2 *D. & R.* 47. Removal of Lydia Fowler from Holy Trinity to All Saints, Cambridge. Order confirmed. Case:—The pauper, in 1793, married William Fowler, a maker of chair-bottoms and mats. In 1807 Fowler hired a house in St. Peter's, Cambridge, of the value of 9*l.* 10*s.* per annum, and resided there above a year; during the same time he had two separate parol contracts for two

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A water-mill is a tenement, and gains a settlement.

So a wind-mill.

Not so taking the pasture of a piece of land, which gains no settlement.

Renting hay-grass and aftermath for ten months, gains a settlement.

Where a pauper resided a year in a house in the parish of A., and during all that time had two subsisting parol contracts for two

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ponds, or the rushes and flags growing therein, which he was to have the exclusive right of cutting at his pleasure: Held, to be a sufficient tenement to confer a settlement in A., the whole being together above the value of ten pounds per ann.

Renting fogg or after grass, confers a settlement. So taking land for a particular purpose.

The tolls of a market are a tenement.

ponds, or for the rushes and flags growing therein; one of the ponds was of the extent of three acres, in which he was to have the exclusive right of cutting the rushes and flags at his pleasure, but not of draining off the water; the owner had the right to use the water, or to drain it off, as he thought proper. For this W. F. was to pay 5s. a year to the occupier of the farm in which it was situated. The pond was not fenced off from the rest of the field, and the occupier's cattle, when depasturing there, used the pond for drinking at; but the rushes and flags were not such herbs as the cattle would eat. The other pond was only about a quarter of an acre, and was occupied under similar circumstances, at the yearly rent of 5s. and two doormats of the value of 2s. The next year W. F. agreed to pay 10s. for the same, but died before the rushes were all gathered. The contracts for the ponds subsisted during all the time that W. F. occupied the house in St. Peter's. *Per Curiam*, "There is no valid distinction between a lease of grass and one of rushes growing upon the land. This case is, therefore, similar to *Rex v. Stoke* (*ante*, 589.) If this had been a bargain for any thing in a state to be severed, as in *Warwick v. Bruce* (2 M. & Sel. 205), it would have been a personal contract: but here, the pauper's husband had a right to all the rushes which might grow in the ponds during the year. That gave him a continuing interest in the soil for the whole year; and by renting those ponds, together with the house in St. Peter's, he held a tenement of greater value than 10*l. per annum*. It is found as a fact, that he resided in that house for more than a year; he therefore gained a settlement in that parish. The consequence is, that the pauper was improperly removed to All Saints." Both orders quashed.

Rex v. Brampton, 4 T. R. 348. The pauper, T. Caile, rented premises in Brampton in Cumberland, of the yearly value of 9*l.*, and during part of the time took the fogg or after-grass of two fields, the one for 30s., the other for a guinea a year; the whole of which he occupied for more than forty days. The court of K. B. were clearly of opinion that the pauper gained a settlement in Brampton; and that this could not be distinguished from *Rex v. Stoke* (*ante*, 589). They added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement.

Rex v. Chipping Norton, 5 East, 239; 2 Bott, 112. Removal from Chipping Norton to Over Norton. Order quashed. Case:—The pauper went to live at Chipping Norton, where he rented a house at 8*l.* 10s. per annum. The corporation of Chipping Norton is possessed of the fairs and markets within the borough, and of the toll for all cattle actually sold at the same. The pauper at a court-leet took the said toll by a verbal agreement of the corporation at 12*l.* a year, and continued to collect it under that agreement for two years, when it was agreed that he should have it for ten guineas, under which last agreement he collected it for several years more. *Co. Litt.* 19 b. 20, c. 2, was quoted in favour of the settlement. "The word *tenements* includes not only all inheritances which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exerciseable within the same, though they lie not in tenure; therefore these may, without question, be entailed as rents, estovers, commons, or other profits whatsoever, granted out of land; or uses, offices, dignities, which concern lands or certain places, &c. because all these savour of the realty." And it was added, that the renting of tolls had been so much considered as the taking of a tenement, that by sect. 56 of the general turnpike act, 13 Geo. III. c. 84, it is provided, that no toll-gate keeper shall gain a settlement by renting the tolls. On the other side it was said, that this was a mere *personal contract*; and it was objected that a corporation could only demise under *seal*, and here the tolls were stated to have been taken by a *verbal* agreement. And Lord Ellenborough, C. J. said, "that as no interest passed to the pauper by such *parol* demise, the question could not be raised. It was a mere license to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. But if this difficulty (as to the mode of agreement) could be got rid of, the other point, as to the taking of the tolls being a taking of a tene-

ment within the construction which had been put upon that statute, might be disposed of in favour of the settlement, upon the authority of Lord Coke, in his comment upon the statutes of *Westminster*, 2; and on *Webb's case*, 8 Rep.; and on the opinion of Lord Kenyon in the case referred to, that a taking of an incorporeal tenement will confer a settlement." The court directed inquiry to be made if any interest in the tolls had passed from the corporation to the pauper, or any person under whom he claimed. But it was found that no other instrument had been executed, except a bond given by the pauper to the corporation, with sureties for the rent, and the court said that could convey nothing from the corporation; and the order of sessions was quashed.

Rex v. North Duffield, 3 M. & Sel. 247. Removal from Spaldington to North Duffield confirmed. Case:—By 33 Geo. III. "for building a bridge over the river Derwent," &c. certain persons are constituted a corporation, by the name of the Company of Proprietors of the Derwent Bridge, and are empowered to have a common seal, &c. In pursuance of this act a bridge was built over the Derwent called Bubwith Bridge, and a house erected where the tolls are collected. In February, 1811, the pauper entered into the occupation of his toll-house, and the tolls there received, in pursuance of an instrument, by which five persons therein described as five members of a committee appointed for managing the affairs of the company of proprietors of Derwent Bridge, demised to the pauper the toll-house and toll-bar, together with the pontage and tolls, to hold for one year, at the rent of 126*l.* by monthly payments: and the pauper, together with one Holtby his surety, covenanted with the five persons to pay to the company the yearly rent; and in default thereof, it should be lawful for the company to enter upon the toll-house, &c. and receive the tolls, &c. This instrument was signed and sealed by the respective parties, but the seals of the five persons were only their private seals, and the corporation seal was not affixed to this instrument. The pauper continued in the occupation of the toll-house and the tolls above forty days, and paid rent for the same. The toll-house is situate, and the tolls receivable, in North Duffield. The annual value of the toll-house did not exceed 5*l.* but the annual value of the tolls greatly exceeded 10*l.*, and they were let for 70*l.* After argument, Lord Ellenborough, C. J. said, "the residence in the toll-house, if it had been of sufficient value, might have answered the purpose of a settlement, but there the value fails; and the tolls are not things which lie in tenure, but only in grant; therefore, without a deed, an interest in them could not pass." (a) *Le Blanc*, J. "In *Wood v. Tate* the plaintiff in replevin was the party distrained on, and paid rent to the party by whom the distress was made; he was, therefore, stopped from denying that he held under them. He had acknowledged a holding by the payment of rent." *Bayley*, J. "That case shows the distinction between land and an incorporeal hereditament." Orders quashed.

Rex v. Denbigh, 5 East, 333. R. Hughes agreed with the toll-keeper in H. to go and receive the tolls in the turnpike house in H. as the servant, and for the use of the toll-taker, for which he (Hughes) was to be paid 3*s.* 6*d.* per week. Hughes went, and whilst there he took a field in H. of the value of 12*l.* a

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Occupation of a toll-house and tolls of a bridge demised for a year by five members of a managing committee under their own seals, but not under the corporation seal, was held not to confer a settlement, the annual value of the toll-house alone not exceeding five pounds.

A toll-keeper gains a settlement by renting a tenement in the parish in which he keeps the toll.

(a) In *Rex v. Chipping Norton* (ante, 590), Lord Ellenborough said, "that as no interest passed in the tolls by the parol demise to the pauper, no question of settlement could arise. This parol demise was a mere license to him to collect the tolls, the right to which still remained in the corporation."

In *Rex v. Old Alresford* (ante, 587), it was urged, that the right to the fishery was a right to an incorporeal hereditament, and could only pass by deed, and then it was stated to be by parol.

Buller, J. "The court go upon this ground, that the sessions have no occasion to go into the title of the lessor at all. The fact of letting the fishery is sufficient, and we must presume the soil passed with it."

Rex v. All Saints, Derby (ante, 589). There was a demise by corporation, but not by deed; and the court held, that as the pauper was let into the enjoyment by permission of the corporation, it was sufficient, and that they were not obliged to go into the title.

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A person renting the tolls and residing in the turnpike house erected by order of the commissioners appointed by statute for paving, lighting, and regulating the streets of Durham, cannot gain a settlement in the parish by the general turnpike act, 13 G. 3, c. 84, s. 56.

Renting the tolls of a bridge, vested by act of parliament in a company of proprietors, confers a settlement, although the tolls are made personal estate, and the renting is not stated to be by deed.

The renting of tolls and a toll-house will not

year. During this time he, his wife, and family, continued residing in the toll-house. The 13 Geo. III. c. 84, s. 56, (a) enacts, "that no gate-keeper residing in a toll-house shall thereby gain a settlement in any parish," &c. It was argued that the word *thereby* included the "*residence in the toll-house*;" and that such residence should not be contributable to the settlement. Lord *Ellenborough*, C. J. "The act only meant that a settlement should not be gained by keeping the gate or *renting the tolls*, and residing in the toll-house. But that does not prevent him from gaining a settlement *aliunde* in the same parish where the toll-house is situated; that here a close worth above 10*l.* was rented in the parish, and there was residence in the parish. He did not even rent the tolls: he was merely the servant of another." Order of sessions quashed.

Rex v. Elvet, 11 *East*, 93. Removal of Frances, the widow of John Taylor, from West Rainton to Elvet. Order confirmed. By 30 Geo. III. c. 67, intituled "An Act for paving, lighting, watching, and regulating the streets, &c. of Durham," authorizing the commissioners to take tolls and appoint persons to collect them in the streets of Durham; it is provided that if instead of collecting the tolls in this manner it should appear to the commissioners more expedient to collect the same at toll-houses or turnpikes, it should be lawful for them to erect two turnpikes for the purpose of collecting the tolls, and the property of all such turnpikes and toll-houses should be vested in the commissioners: the commissioners might lease the tolls: the commissioners erected a turnpike gate and house for collecting the tolls within Elvet, and in 1796 demised the same, with the tolls, to one Reather for three years, who on the 23d August, 1796, leased the same by indenture to Elizabeth and John Taylor for three years, at the yearly rent of 202*l.*: under this lease John Taylor alone entered into the toll-gate and house, and continued to reside there with his family, collecting the tolls for the said term. The tolls were collected and appropriated to the general purposes of the act; neither the tolls nor the gate-houses, nor the respective lessees, were assessed to the poor's rate. *Per curiam*: "There is no difference in effect, though the appellation of turnpike road does not occur in the local act; the one is a stone road and the other a gravel road, and every character belonging to a turnpike road belongs as well to this: the commissioners are trustees for the repair of the roads, and this case is within the prohibition of the 56th clause in the general turnpike act." Order of sessions quashed.

Rex v. Bibworth, 1 *M. & Sel.* 514. An order for the removal of John Massey, &c. from Bubwith to Foggathorpe, discharged. Case:—Massey rented for one year the tolls and toll-house of Bubwith bridge in Duffield. These tolls were collected by virtue of 33 Geo. III. intituled "An Act for building a Bridge over the River Derwent at Bubwith Ferry, and making proper Approaches thereto." The tolls and toll-house were of the annual value of 70*l.* The value of the toll-house alone was less than 10*l.* per annum. Lord *Ellenborough*, C. J. "It is true the words 'turnpike road,' did not occur in the act upon which *Rex v. Elvet* (*supra*) was decided. But the commissioners under that act were trustees of the road; and it was to all intents considered as a turnpike road. As to the renting, it is enough for us to decide on the doubts which the sessions actually entertained; and they have not stated any doubts upon that subject; for they have stated simply that the pauper rented the tolls, which must be understood a legal renting. Then the only question remaining is, whether tolls are a tenement. There is no doubt that they are so generally; but it is said that here they cannot be so, because the act has made the shares of the proprietors personal estate. That however does not make them less a tenement in the hands of the persons to whom demised: suppose the act had vested the shares in the proprietors for a term of years, they would still have been a tenement." *Le Blanc*, J. "In *Rex v. Elvet* the court deemed it a turnpike road; the act enabled the commissioners to erect turnpikes on the high road." Order of sessions confirmed.

Rex v. St. Andrew, Cambridge, 10 *Bar. & C.* 742. Where the lessee of

(a) And see the acts, *ante*, 584.

tolls and a toll-house of a navigation underlet the same for the remainder of a term of three years at the annual value of 42*l.*, and the under-lessee occupied them for upwards of a year, and paid a year's rent, and it was found as a fact that the toll-house had always been used as a public-house as well as for the collection of tolls, and was worth 25*l.* a year if let as a public-house without the tolls, and 4*l.* a year if not so let, it was held that the under-lessee did not gain any settlement by the renting of a tenement, inasmuch as he was a person renting the tolls and residing in a toll-house of a navigation within the 54 Geo. III. c. 170, s. 5.

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confer a settlement under 54 Geo. 3, c. 170.

Rex v. Piddletrenthide, 3 T. R. 772. John Belly removed from Chaldon Herring to Piddletrenthide. Order confirmed. Case:—For two or three years, while the pauper lived in Chaldon Herring, he rented in that parish a dairy of thirty cows, some at 5*l.* 10*s.* and others at 5*l.* per cow, with liberty to cut furze on Grange Warren, and on other parts of the farm, for the use of the dairy only; and a warren to kill rabbits for his profit, called Grange Warren, with a small house on it to keep nets, in the same parish, of the same man, at 30*l.* per annum; and also another rabbit warren in the neighbourhood, for the same purpose, at 15*l.* per annum. The cows were to feed in particular grounds at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in Grange Warren. The pauper had no right in the soil of either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same and ploughing some part thereof. Lord *Kenyon*, C. J. “If we were now called upon for the first time to make a decision on this statute, perhaps I should have some difficulty on the subject; but the courts have put a liberal construction on it. I cannot quite agree with *Rex v. Lockerly*; because after it had been decided in so many cases that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. But without considering that case, I think that the pauper took a tenement in Chaldon Herring both by renting the dairy and the warren. Lord *Coke* says that *prima tonsura* is a tenement; then the dairy was a tenement. The other taking was also sufficient; for it was, if I may use the expression, a pernancy of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to *Rex v. Lockerly*, (a) perhaps I

Renting a dairy or a rabbit warren, is such a tenement as confers a settlement.

So also is renting a warren to kill rabbits, though the soil be not taken, but merely a right to enter and take the rabbits. (a)

(a) The case of *Rex v. Lockerly*, which by *Rex v. Tolpuddle* (post, 594), is now overruled, was as follows:—(*Burr. S. C.* 315; *Bott*, 137 n.) Removal from *Lockerly* to *Shirefield* English quashed. The pauper went to *Lockerly*, and there entered into articles of agreement with one J. M. as follows:—M. covenanted with the pauper to demise to him a dairy of sixteen cows, with a messuage and dwelling-house, and feeding for the cows on twenty-one acres of clover ground, and thirteen of meadow land, with the after-lease of a meadow, all in *Lockerly*; “also the run of the yard and the arshes of the farm (of which the dairy, &c. were part) for pigs; and the run of one horse with the cows for one year; M. to allow E. all the shew wheat arising from the corn growing on the farm; and also provide for the use of the cattle, when wanted, five tons of hay; and for the feed of the cattle, cause the above-mentioned lands to be laid up at certain

times; and fetch the necessaries and fuel of E. home to the messuage. And if the cows shall not be delivered of their calves by the 1st of May, M. shall deduct out of the rent 2*s.* per week for every cow until she shall be delivered, and also what may be reasonable for every calf wanting to each cow. E. to pay to M. 3*l.* 5*s.* for every cow, payable quarterly.” E. entered and occupied; the cows were fed on the lands mentioned; and during some time sheep belonging to M. were fed with them on a part of them; but the thirteen acres of meadow were never fed but by the said cows. After argument, *Wright*, J. said, “that the land seemed to have remained to M. for he was to lay it up at such a time. That a tenement must lie in tenure, and must relate to land, whereas this contract related to cows. The pasture of the ground generally is not let, but only the feeding of sixteen cows. That the value of the meadow was not stated.

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should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice), I think that the pauper gained a settlement in Chaldon Herring." *Ashhurst, J.* "It seems difficult to reconcile all the cases on this subject. If *Rex v. Lockerly* be law, I do not see how this pauper can have gained a settlement in Chaldon Herring; but as there are authorities both ways I am inclined to think that a settlement was gained in Chaldon Herring; the *criterion*, by which the question is to be decided, being the ability of the person taking the tenement." *Buller, J.* "In all doubtful cases one leading ground is, the ability of the pauper to pay the 10*l.* per annum. But on the facts here stated, I think this person rented a tenement within the statute of Car. II. I cannot agree with the determination of *Rex v. Lockerly*. That was considered as a personal contract; but all contracts are in all respects personal. The question in such cases really ought to be, whether or not it be *a contract to receive the profits out of land?* The present I consider as such; and so was that in *Rex v. Lockerly*. I am therefore of opinion that the conclusion drawn in that case was wrong. As to the other point I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let; otherwise the contract between the landlord and the tenant would be destroyed. In that respect then the pauper had an interest in the land. Besides, he took a house with the warren." *Grose, J.* "It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which *Rex v. Lockerly* was decided. In these cases, I think, that if the pauper had credit to rent 10*l.* per annum, he gained a settlement. *Kinver v. Stone* (*ante*, 587,) decides the present." Both orders quashed.

Renting cows by the year, to be fed in particular grounds belonging to the owner, exclusively of any other cattle, is a tenement, and confers a settlement.

Rex v. Tolpuddle, 4 T. R. 671. G. Hill removed from Puddletown to Tolpuddle, in Dorsetshire. Order confirmed. Case:—J. Chapman was the tenant and occupier of a farm in Tolpuddle, part of the stock of which farm consisted of cows, which, according to the usual course of husbandry in that county, had been constantly let to some dairy-men. The pauper rented, under a verbal agreement, those cows of Chapman, at 3*l.* 10*s.* per cow per annum; it was also agreed between them (as is usual there), that the owner of the cows should feed and support them, and that they should depasture in the Cow-leaze Grounds from May-day till the 18th September, and afterwards in certain meadow grounds, which are kept for that purpose, from the time the same are mowed; both which grounds were part of the farm then in the occupation of Chapman; and when the pasture of the meadow grounds was consumed, that the cows should be kept by Chapman in some other of the farm grounds with his other cattle, or be foddered in the farm yard with hay by him. The Cow-leaze was not to be fed upon by any cattle from Lady-day till May-day, nor was he to feed any other cattle either in the Cow-leaze or meadow ground whilst the same were fed by the cows so rented. But the hay of the meadow ground was cut and taken away by Chapman, and the Cow-leaze was fed by him after the cows had quitted it, and he was to repair the fences. In case any cow did not calve before May-day, or afterwards if any of them died or become barren, an allowance was to be made to the pauper; and in case of sickness amongst the cattle Chapman was to defray all expenses. The pauper was also to have a dwelling-house, and a right of feeding a mare on the farm, and keeping his pigs in the yard, and of cutting fuel for the use of his dairy; but he had no other right whatever. This contract continued for five years, and the pauper resided during the whole time in the house in Tolpuddle. The above are the usual terms of letting such farms in that county, and is called a letting of a dairy. *Bear-*

That it was *only an agreement for the use of the cows*, and the feeding of them; and was merely personal. That no interest in the land passed or was intended to pass." (And he said, "that if in the

case of *Minchin Hampton*, it were an agreement 'for the pasture only of the land,' he should doubt of it.")—To this the other judges assented, and quashed the order of sessions.

croft supported the order. (a) Lord Kenyon, C. J. "It is certainly very much to be wished that the decisions of the magistrates below should, on examination here, be found to be consonant to the laws of the land. And I am happy to find that we are relieved from the supposed inconvenience of sending down a new code of laws to the county where this question arose; because our opinion concurs with that formed by the justices in their sessions, as well as that of the justices who made the original order. From the passing of the statute of Car. II. to the present time, the construction put on it has been (what is called) a liberal construction, in order to confer a settlement on those persons who have the ability to take a tenement which the statute has established as the criterion. I confess it seems to me impossible to reconcile the decision of *Rex v. Lockerly* with our determination in this case, that the pauper gained a settlement in Tolpuddle; but if we are of opinion that that case cannot be supported, it will be more manly to say so in express terms, than by endeavouring to make nice distinctions, to induce the magistrates below to consider it as an authority hereafter. When the case of *Rex v. Piddletrenthide* (*ante*, 593,) came before us we all doubted of the decision of *Rex v. Lockerly*; but there being other distinct ground upon which we were warranted in supporting the settlement, we were not directly called upon to overrule that case. But now it being impossible to distinguish between this case and that, I think we are bound to deny the authority of that case, and to substitute in its room a better exposition of the statute of Car. II. It has been argued, that if we decide this to be a tenement, we shall depart from the words of the statute, but in this case the pauper took a tenement, emphatically a tenement. Any thing is a tenement which is a profit out of land. In order to make a tenement it is not necessary the party should have the fee simple or fee tail, any minute interest in land is parcel of a tenement; such minute interest indeed cannot be entailed, but all the parcels when consolidated together may. A beast-gate has been held to be a tenement, and yet that is not the whole land, but the profits of the land to a certain amount. So here the profits of those lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own, and he had rented the feeding of them, that would have been unquestionably a tenement, like the taking of a pasture, the hay and aftermath. And I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his that he might use them under the contract for a limited time. And this was not the less the taking of a tenement, because the pauper could only enjoy the land in a particular mode, for in many farms the tenant stipulates that he will not depasture sheep or horses on particular grounds. I do not see, therefore, why this is not strictly speaking a tenement, for the pauper had for a certain part of the year the exclusive right to the pasturage of these grounds, to be taken by the mouths of the cattle." The other judges delivered opinions to the same effect. Both orders confirmed. (b)

Rex v. Minworth, 2 East, 198. Removal from Minworth to Worley Wigorne quashed. Case:—The pauper, by a verbal contract, rented from Lady-day till six weeks after Michaelmas two cows, at 5s. a cow per week, of J. G., the tenant of certain lands in Minworth. It was agreed that the owner of the cows should feed and support them: they were to be fed on certain lands specified, but which lands were not of the annual value of 10l. G. was not to feed any other cattle in any of the lands whilst they were depastured by the cows rented by the pauper. It was contended, that it was enough if the annual value of 10l. had arisen from something connected with the realty, though no part thereof. *Grose*, J. "This case is very plain. Unless the pauper occupied a tenement of 10l. a year value, he could gain no settlement. And that fact is expressly negatived; for it is stated that he rented two cows, which were to be fed on particular lands, and that those

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But the land on which the cows are depastured must be of the annual value of ten pounds.

(a) It was admitted that the annual value of the land was more than 10l. See 2 East, 199, n. (c).

(b) See also *Burt v. Moore*, 5 T. R. 329.

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The value of the cows can form no part of the annual value.

If the pauper have not an exclusive right to the pasture where the cows are fed, and the cows be his own, it is a common in gross.

The contract as to the feeding must be specific to gain a settlement.

If the cows be not the pauper's own, and the contract be only for the privilege of milking them, they being to be depastured on a certain farm, that will confer a settlement.

lands were not of the annual value of 10*l.* That makes an end of the question. The principle on which the renting of dairies has been holden to confer a settlement is, that in truth it is a contract for a certain interest in the land, to be enjoyed in a particular manner, that alone constitutes it the taking of a tenement; and in each of these cases which have been decided on that ground, it was understood that the land itself was of the requisite value. The pauper, then, did not gain a settlement by the renting and occupation in question." *Lawrence, J.* "In *Rex v. Tolpuddle* (*ante*, 594), the value of the cows was never taken into consideration as forming part of the value of the tenement. The produce of a warren is the rabbits, as much as the produce of the fishery is the fish."

Rex v. Hollington, 3 *East*, 113. Removal from Breadsall to Hollington confirmed. Case:—The pauper went to reside in St. Werburgh, in Derby, and occupied a house there of the annual value of 5*l.* During the time he occupied this house he rented the ley of two (of his own) cows from May-day to Michaelmas, at six guineas, in a large pasture containing 100 acres, and of the annual value of 250*l.*, belonging to Mr. Mundy. Mundy was under no restriction as to what number of cows he kept in it. It was insisted that the circumstance of the pauper's having no exclusive right to the pasturage differed this from the preceding cases. Lord *Ellenborough, C. J.* "This is nothing more than a common in gross, which has been holden to be a tenement within the statute. If Mr. M. overstocked the land, the tenant might recover in damages." *Lawrence, J.* "Mr. J. Buller states that the question in cases like the present is this, *Whether or not it be a contract to receive profits out of land?* If that be so, it determines this case, for here the cows were the pauper's own, and the contract, which was for the pasturage of them, was, to use the words of Lord *Kenyon* in the same case, a contract for the pernaney of the profits of the land by the mouths of the cattle." Both orders quashed.

Rex v. Tisbury, 2 *Nol. P. L.* 19. *Per Lawrence, J.* "A contract to feed cows generally, under which they might be fed with green tares bought in the market, would not be a tenement within the act."

Rex v. Stoke-upon-Trent, 10 *East*, 496. Removal from Stoke-upon-Trent to Norton-on-the-Moors quashed. Case:—The pauper, under a verbal agreement, rented and paid for the hire and privilege of milking two cows, belonging to a Mr. Repton, 5*s.* 6*d.* per week each cow for forty successive weeks. The cows were by the agreement to be depastured by Repton on his farm in common with his other cows; and were in fact depastured on such lands of the farm as Repton thought proper: the pauper never went to fetch them, but they were brought up with Repton's other cows to the fold-yard, and there milked by the pauper. During the time the pauper rented the cows he resided in a cottage in the parish, for which he paid 50*s.* a year. The depasturing of the two cows, together with the cottage, was worth more than 10*l.* a year. Lord *Ellenborough, C. J.* "There is no solid distinction between *Rex v. Hollington* (*supra*) and this. There the pauper had only hired the depasturing of his own cows in common with the cattle of the owner in certain land; here he hired the cows themselves, which for this purpose are the same as his own, together with their depasturing in common with the owner's other cattle upon a certain farm; all included in one contract. If the cows had been the pauper's own, this case would have been identically the same as the former; but that fact was no material ingredient in the former case; for the cows are his own for the time he hires them, and in some of the cases where a settlement was gained the cows were hired as well as their feeding." *Grose, J.* "This is a contract to take the milk of cows to be depastured on a certain farm; which is purchasing *pro tanto* the interest in those pastures in which the cows were to be fed." *Le Blanc, J.* "The only difference between this case and *Rex v. Piddletrenthide* (*ante*, 593) is, that there it was stated to be the renting of a dairy, which is only a contract for the hire and privilege of milking cows, which during the time are to be depastured on the owner's lands. But there the cows were to feed in particular grounds at particular seasons of the year; and here they were to be depastured on the farm

in common with the owner's other cattle. In *Rex v. Tolpuddle* (*ante*, 594), the agreement was as here, for the owner's cows at so much a-head, and though they were to have the exclusive pasturage of certain grounds during part of the year, yet that has since been held to make no difference. The reasoning of Lord *Kenyon* in that case will apply to this case. In *Rex v. Minworth* (*ante*, 595), there was no doubt but that the contract was for the taking of a tenement; but the value of the land on which the two cows were to be depastured did not amount to 10*l.* a year, and therefore no settlement was gained. Now here the pauper contracted for the milking of two *specific* cows (not any cows) which were to be depastured on the farm of the owner, together with his other cattle, the value of which pasturage, together with the cottage rented by the pauper during the same time, amounted to more than 10*l.* a year. Then it was decided in *Rex v. Hollington* (*ante*, 596), that hiring the feeding of cows for a certain time, in common with the cattle of the owner of the pasture in which they are to be fed, is a taking of a tenement. This then is the same as if the pauper had hired the cows at so much, and the pasture for feeding them at so much more, though the two sums are compounded in one." *Bayley, J.* "The agreement here is that the owner should *depasture* the cows upon his farm in the parish, which must mean that they were to be fed on the pasture grown on the land; if, therefore, he had fed them in any other way it would have been a breach of his contract." Order of sessions quashed.

Rex v. Darley Abbey, 14 *East*, 280. Removal of W. Bainbridge, &c. from Duffield to Darley Abbey, in Derbyshire. Order confirmed. Case:—The pauper for two years resided in a house and occupied a garden in Darley Abbey, of the annual value of 8*l.* 18*s.*, and during the whole of that time he and one John Meyer jointly hired the milking of a cow in the following manner. The pauper applied to Mr. Evans, at whose factory he and Meyer worked, for the milking of a cow betwixt them; Evans referred the pauper to his agent, Mr. Harvey, to agree for the cow; Harvey agreed they should have a cow *for the season* for 9*l.* The particular cow was pointed out; the cow was at that time upon a farm of Evans's, which he occupied. Nothing was said as to how or where the cow should be fed, more than that Harvey said that Jerom, Evans's farming man, would inform the pauper in what pasture the cow would be first milked, and he did inform him, and so from time to time when the pasture was changed, that he might know where to go to milk her. The cow was grazed in Evans's pastures in the same farm for the whole of the two seasons with other cows, which were let in the same way to other workmen of Evans's, and with other cattle belonging to Evans. The pauper and his partner always milked the cow during the whole time. They hired the same cow four successive seasons, and the cow was always grazed in the same way on Evans's farm. The summer pasturage of the cow alone was admitted to be of the value of 5*l.* each season. After hearing counsel, Lord *Ellenborough*, C. J. "It has been too long ago decided to be now shaken, that the hiring of the feeding of cows is a sufficient taking of a tenement to confer a settlement within the statute, if the tenement be of sufficient value; and here the necessary value is made up by the contract which the pauper entered into for hiring the milking of a cow in the manner stated in the case. A contract for the mere milking of a cow is indeed no more than a contract for a personal thing; and, therefore, unless through the medium of the cow, he contracted for the permanency of the profit of land, there could be no settlement gained. But the question is whether by this contract, explained as it is by the subject matter and the circumstances, the owner was not to furnish the pauper with a cow to be fed upon the land. Where parties understand the subject of their contract a few words are sufficient for the terms of it, and sometimes it may be collected from their acts, without words. Here the contract was made by the pauper with a man who had a farm, and cows then feeding on it; to him the pauper applied for the milking of a cow, and Harvey agreed that the pauper should have a cow *for the season* for 9*l.*, and the particular cow was pointed out. The term *season* would import, according to the subject-matter, during the time that the grass

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A contract for a pasture-fed cow for the season is a sufficient tenement to confer a settlement.

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grew on the land to feed the cow. [During the argument, Lord *Ellenborough* said, "Does not 'season' mean *pasture* season? Can the word season be construed without reference to pasture?"] The cow was then fed upon the owner's farm, but nothing was said how or where the cow should be fed, that is, the particular land on which the cow was to be fed was not mentioned; but the pauper was told in *what* pasture the cow would be first milked; and whenever the pasture was changed he was informed of it. Then is it not to be fairly understood that when the cow was to be milked on pasture ground, she was also to be fed there? What could be meant by changing the pasture, but for the purpose of her being fed on fresh pasture? If, then, the owner had fed the cow on dry food, as grains, instead of pasture, it would have been a breach of the contract. The parties meant to contract for a pasture-fed cow for the purpose of milking. The principle established by the former cases cannot now be questioned, and this case is governed by it." *Grose, J.* "The permanency of profits of land must be established, in order to confer a settlement by this kind of contract; here I think it was established." In answer to the observation, that the pasture was pointed out, that the pauper might know where the cow was to be milked, *Grose, J.* said, "Then, must it not be understood that the cow was to be fed on the pasture where she was to be milked?" *Le Blanc, J.* "Nobody who reads this case can doubt that this was a hiring by the pauper of a cow to be fed on the pasture of him who let it. The facts are, that the pauper applied to Mr. Evans, the owner of the farm on which there were cows, for the milking of a cow; the owner referred him to his agent Harvey, with whom the pauper agreed for a cow for the season at 9*l.*, and a particular cow was pointed out; and though nothing was said as to how or where the cow was to be fed, yet Harvey told him then that the owner's farming man would inform him in what pasture the cow was to be first milked; that is, on what particular pasture she was then fed: is it not evident from this that it was a contract for the hire of a pasture-fed cow? It is objected, that no specific land was pointed out on which the cow was to be fed; but that need not be agreed upon, nor need it have been fed upon the *same* land on which the owner was residing. It is clear, however, that this cow was to be fed upon the farm in the occupation of Evans, or upon land that he was to provide for her, and in fact she was depastured upon the farm all the season." *Bayley, J.* "Here there can be no doubt that the contract was for the milking of a cow which should be pasture-fed during the season, either upon land of the farm in the parish where the parties contracted, and were residing, or at least within a reasonable distance of it, in order that the pauper might have a convenient opportunity of coming to milk the cow. And if the owner had fed the cow otherwise than upon pasture, an action by the pauper would have lain for a breach of the contract." (a) Order of sessions confirmed.

The contract must be to feed the cattle with the growing produce of the land.

Rex v. Sutton St. Edmunds, 1 B. & C. 536; 2 D. & R. 800. Removal of T. Watson from Leverington to Sutton St. Edmunds. Order confirmed. Case:—The pauper, at Lady-day, 1793, agreed with J. Ulyatt, a farmer in Leverington, to serve him as a confined labourer in husbandry (that is, to work for him and no other person) for a year. The agreement was, the pauper to have 18*l.* a year wages. His master either to find him two cows, or the pauper was to be at liberty to provide himself with two and feed them on his master's farm during the same year. The pauper went into the service of Ulyatt, under the agreement, at Lady-day, 1793, and continued therein till Lady-day, 1797, under contracts to the same effect. During the first three years of such servitude, the pauper lived in a house on his master's farm in Wisbeach High Fen, and the last year of such service in a cottage at Leverington. The occupation of the cottage was incidental to the service of the pauper, who was discharged from it at the same time that he left his service. The pauper bought one cow, and his master found him another, both of which were fed during the summer in the pasture of his master, and

(a) So also in *Rex v. Minster* (post, 614), the liberty to feed two cows on his master's farm was held a tenement.

in the winter were kept in the straw yard of his master, and fed with hay grown upon the master's lands. The pauper had the exclusive use and advantage of such cows. If the pauper had not had such cows kept for him on his master's farm, he would have had more wages; and at the time he left Ulyatt's service in 1797, he took his cow with him. Evidence was given that the keep of the two cows during the summer months would require two acres and a half of land, on which they were fed, and that such acres were worth together annually 5*l.* 5*s.*; and that to cut hay sufficient for the winter keep would require two acres and a half more of such land of the annual value of 5*l.* 5*s.*; and that the summer feed and winter keep with hay for the two cows on such farm were of the annual value of 10*l.* 10*s.* The sessions were of opinion that the keeping and feeding of the cows under the above circumstances did not constitute such a tenement as gained the pauper a settlement. Puller supported the order of session, in the course of whose argument, Bayley, J. referred to *Rex v. Oswald Twissell*, M. T. 1818, in which case the pauper rented, *inter alia*, the milk of a cow to be kept by the owner; her keep made up the necessary value 10*l.*, and she was in fact pasture-fed; but it was held, that as it did not appear to have been made matter of bargain that she should be pasture-fed, hiring her milk was not necessarily taking a tenement, and the order of sessions allowing the settlement was quashed. Holroyd, J. "The sessions have not found that the right of feeding the two cows on the land was of the annual value of 10*l.*" Abbott, C. J. "It has been settled in several cases that the liberty to take the profits of land by the mouths of cattle is a tenement within the 13 & 14 Car. II.; but *Rex v. Oswald Twissell* is an authority to show that the contract must apply to growing produce, and that a contract partly for growing produce and partly for hay is insufficient to give a settlement. The contract in this case is not very distinguishable from that in *Rex v. Minster*, although it is to be observed, however, that no question was raised in that case as to the manner in which the cattle were to be fed. The question was treated both by the bar and the bench as if they were to feed upon the growing produce, and that the pauper acquired a right to the profits of the land itself. Le Blanc, J. says 'the liberty of taking the profits out of land is found to be of greater value than 10*l.*' It was a point conceded in that case that the mode of feeding was sufficient to give a settlement. Here the distinction is pointed out, and according to *Rex v. Oswald Twissell* the contract must be to feed the cattle with the growing produce of the land. Now in this case the master was only bound by the contract to feed the cattle during the year upon the farm, according to the usual mode, that is, to feed them during the summer upon the pasture, and during the winter in the straw-yard. The summer keep upon the pasture is found to be of no greater value than five guineas, and the winter keep, for the reasons already given, cannot be taken into consideration; and that being so, I am of opinion that the pauper did not gain any settlement in Leverington." Bayley, J. "The party, in order to gain a settlement, must come to settle upon a tenement of the yearly value of 10*l.* The right to take the herbage and produce of the soil is a right to the profits of the land, and constitutes a tenement. But the contract must be for taking the growing produce of the land. Now here it is stated that by the contract the pauper was to be at liberty to feed the cows on his master's farm during the year. By that contract the master would be bound to feed the cows during the whole year in the usual mode, viz. to feed them on the pastures during the summer, and in the straw yard during the winter. The right to feed cattle for a period of the year when they are usually pasture-fed, by eating the growing produce of the land, is a tenement; but the right to feed cattle by dry food, not necessarily a part of the produce of any particular land, is not a tenement. That point was not taken in *Rex v. Minster* (*post*, 614). *Rex v. Oswald Twissell* is an authority expressly to show that the value of the pasturage can alone be taken into consideration in estimating the value of the tenement occupied by a pauper under such a contract as this. Here the value of the pasturage alone amounted only to 5*l.* 5*s.*, and consequently the pauper had not a tenement of the annual value of 10*l.*" Holroyd, J.

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"I am of opinion that the pauper gained no settlement by this contract. Agreements for liberty to take the growing produce of land by the mouths of cattle, have been considered as equivalent to a demise of the land at a rent equal to the profits of the land, and to constitute an incorporeal tenement. The party entitled to the privilege is considered for this purpose as the occupier of land of that value. The authorities establish that where such a contract confers a right of pasturage of the annual value of 10*l.*, a settlement is gained. But a contract to feed cattle with hay in a straw yard gives no right to the occupation of land from which the hay is cut. It is rather a personal contract for the sale of so much hay as shall be necessary for the sustenance of the cattle. Here then the pauper had an interest in that land alone on which his cows were depastured during the summer, and the annual value of that was only 5*l.* 5*s.*, and insufficient." Order affirmed.

Rex v. Bardwell, 2 B. & C. 161; 3 D. & R. 369. Peter Firman was removed from Bardwell to Ixworth. Order quashed. Case:—About twenty-four years ago the pauper, a married man, was hired for a year by S., of Ixworth, as his shepherd; he was to have a house and garden rent free, 7*s.* a week, and the going of thirty sheep with his master's flock as wages. The pauper lived for two years with S. in Ixworth at these wages, during all which time the thirty sheep went with his master's flock on the farm, the whole of which was situated in that parish. The feed of the thirty sheep was worth 16*l.* a year, exclusive of the house and garden. If the pauper had not been allowed to keep the sheep, he must have had more wages. During the argument, Bayley, J. asked "Is there any case except *Rex v. Minster* (post, 614), where the pauper gained a settlement by renting a tenement without (a) residing upon any part of it?" (*Rex v. Houghton-le-Spring*, 1 East, 247, and *Rex v. Sowton*, Burr. S. C. 125.) Bayley, J. "This case certainly comes very near to *Rex v. Minster*, but that is open to much observation. It was there conceded that the right to have the cows fed upon the master's farm was a tenement, and the only question discussed and decided was, the nature of the consideration given for that tenement. In *Rex v. Oswald Twissell* it was held, that unless it was stipulated in the original bargain that the cows should be pasture-fed, a settlement would not be gained, and that decision was recognized and acted upon in *Rex v. Sutton St Edmunds*. (b) In the present case it is probable that the sheep were fed upon the growing produce to the value of 10*l.* per annum, but as it was not any part of the original bargain that they should be so fed, it falls expressly within those two cases, and is not sufficient to confer a settlement." Best, J. "As there was not any agreement here that the sheep should be fed on growing produce, the case fell within *Rex v. Sutton St. Edmunds*." (c)

Rex v. Thornham, 9 D. & R. 752; 6 B. & C. 733. Case:—The pauper was hired as shepherd, at 12*s.* a week, &c. and to have twenty-one ewes going. The pauper lived under this agreement, and brought with him his ewes and lambs. The "going" of the ewes was worth 10*l.* a year. During a part of the first year the ewes were fed off the master's farm on the turnips of a neighbouring farmer, and during a part of the second winter they were fed on straw. Bayley, J. "I think the fair meaning of the expression is, that his twenty-one ewes were to be with and to go with his master's flock, and were to be fed from time to time upon growing produce, or on hay, as his master's flock was. If the term 'going' in that country has acquired a peculiar meaning, the sessions should have found that fact; but without such explanation we must understand the word in its usual sense; and so construing it, the meaning of the bargain is, that the servant was to have the ewes fed either on growing produce or on hay and straw, as his master's flock was, and then it is quite clear that no settlement was gained. For the authorities establish that in order to confer a settlement it must be part of the bargain itself that the cattle should be pasture fed, and that it is not sufficient that they are in fact

Twenty-one ewes "going" does not imply pasture fed.

(a) As to this point see tit. *Residence*. the judges gave an opinion, post, 601

(b) *Ante*, 598.

and 616.

(c) See the other point upon which

so fed." His lordship then referred to *Rex v. Darley Abbey* (15 East, 281, ante, 597) and *Rex v. Oswald Twissel*, as authorities for that position, and said "In all the cases cited in argument there was a right of turning the cattle on a particular piece of land. A *cattle-gate* imports a right of pasture on particular ground. Considering therefore the terms of the contract, and believing that neither of them had any very accurate idea of the meaning of the term 'going,' I think they must be taken to have used it in its ordinary sense. Consequently no settlement was gained." *Holroyd, J.* "The word 'going' has no technical meaning. I think that in its ordinary sense, and when used in relation to the subject-matter of such a contract as this, it imports that which was explained by the other words used in the contract in *Rex v. Bardwell* (ante, 600) to be its meaning there, viz. that the servant's cattle should go with his master's flock. The contract therefore in this case gave the servant no right to have his ewes pasture-fed; and that being so, the authorities referred to establish that no settlement was gained in Thornham." *Littledale, J.* "This case depends entirely upon the meaning of the term 'going.' I am not aware that that word is used in the country in the sense attributed to it in the course of the argument. If the court of quarter sessions had found that the word 'going' had that particular meaning in the part of the country where the bargain was made, we should have been bound by it. But there being no such finding, we ought to understand that word in its ordinary sense, and so understanding it, I think the meaning of the contract was, that the twenty-one ewes were to go as the other ewes went, viz. to be fed on growing produce or on dry food as his master's cattle were; and if that be so, then it is quite clear that the going of twenty-one ewes did not constitute a tenement, and therefore no settlement was gained in the parish of Thornham." Order of sessions quashed.

Rex v. Nacton, 3 B. & Adol. 543. Upon appeal against an order of two justices for the removal of Mary Gibson, widow, and her children, from the parish of Nacton, Suffolk, to the parish of Croxton, Norfolk, the sessions quashed the order, subject to the opinion of this court on the following case:—The paupers were removed to the parish of Croxton, as the last place of legal settlement of John Gibson, the deceased husband of the said Mary. The settlement of the deceased was in Croxton till Midsummer, 1804; he then went under a yearly hiring into the service of R. Stubbings, at Barnham, as shepherd's page, where he lived one whole year. Stubbings had been hired by J. Chambers, a farmer at Barnham, as his shepherd, to go into his service at that same Midsummer, and brought with him to Barnham a certificate dated 1st of June, 1804, acknowledging him, his wife and children, to belong to St. Peter, Thetford, without which certificate Chambers would not hire him. Stubbing's agreement with Chambers was, that he should have a cottage in Barnham to live in rent free, the going of 105 sheep with his master's flock, ten coombs of barley, ten coombs of rye, and firing, in lieu of wages. The occupation of the cottages was necessary for the due performance of the shepherd's service, and out of his allowance he had to lodge and maintain his pages. The appellants contended that this "going" was a tenement sufficient to determine the certificate. The sessions found that the term "going" meant, in the county where the contract was made, that the sheep should be pasture-fed, but that in bad weather the sheep were to be fed on turnips or hay with the master's; and that the actual feeding of the sheep in pasture in Barnham was worth more than 10*l.* a year. The question for the opinion of the court was stated as follows: Whether there was a sufficient coming to settle by Stubbing on a tenement of 10*l.* a year, and if the living in the cottage and the going of the sheep constituted a sufficient tenement? If the court hold in the affirmative, the decision of the sessions is right, but otherwise the paupers were properly removed to the parish of Croxton. *Lord Tenterden, C. J.* "It is now too late to contend that if the remuneration of a person hired to serve in husbandry be by the pasture of cattle on his master's land, that that is not the taking of a tenement sufficient to confer a settlement, if it be of the value of 10*l.* Here the sessions have found that the term 'going' meant in the county where the contract

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A., a certificated man, was hired by a farmer residing in parish B. as his shepherd, to go into his service at Midsummer. It was agreed between them that A. should have a cottage in B. rent free, and the going of 105 sheep with his master's flock. The term "going" in the county where the contract was made, meant that the sheep should be pasture-fed, and the feeding on pasture in B. was worth 10*l.* per annum. At the same Midsummer A. hired C. to serve him for a year as shepherd's page, and he did so serve in parish B. till the following Midsummer. It was held upon a special case, stating these facts as found by the sessions, first, that it was to be inferred from the case that the feeding of the cattle was to be in parish B., and therefore that there was the

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taking of a tenement of 10*l.* per annum in that parish by A. Secondly, that C. gained a settlement by hiring and service with A., because the latter never resided in parish B. by virtue of the certificate, for having come there to settle on a tenement of 10*l.* per annum, he was irremovable as soon as he came into the parish, although he could not gain any settlement there until he had resided forty days.

was made, pasture feeding; and that although in bad weather the sheep were to be fed on hay or turnips, the actual feeding on pasture in Barnham was worth more than 10*l.* a year. It is said that this 'going' does not constitute a tenement, because there is no locality. There is none certainly expressed in the words of the contract between Stubbings and Chambers; but it may be abundantly collected from the other parts of the case, that the feeding of the sheep was to be in Barnham; for first, Stubbings was to have a cottage in Barnham, the occupation of which was necessary to the performance of his duty as shepherd, and the 'actual feeding of the sheep in pasture in Barnham' is found to be worth more than 10*l.* a year. The only doubt on my mind is as to the effect of the certificate. Upon that point we will take time to consider." *Littledale, J.* "It is perfectly well established, that if a party takes a tenement of 10*l.* a year value, whether he pays for it by money or services, he gains a settlement. Here the sessions have found that Stubbings was to have the going of 105 sheep with his master's flock, but it is not to be inferred from thence that the sheep were to be fed out of the parish. The meaning of the term 'going' is, that they should be pasture-fed. I think from the facts found in this case, it may be inferred that the feeding of the sheep was to be in Barnham; and that being so, then according to *Rex v. Benneworth* (2 B. & C. 775; 4 D. & R. 355; *post*, 603), the husband of the pauper would gain a settlement in Barnham, unless he was prevented by the certificate. That question deserves further consideration." *Parke, J.* "I am of opinion that in this case there was a taking of a tenement within the statute 13 & 14 Car. II. c. 12, and that Stubbings, by having made an agreement with his master for the 'going' of the 105 sheep, and residing in the parish forty days, gained a settlement. It is too late now to question the propriety of the rules, that the perception of the profits of land by the mouths of cattle is a tenement within the statute 13 & 14 Car. II. c. 12, and that the occupation of a tenement of the value of 10*l.* will give a settlement, whether the rent be paid in money or in labour. The law upon that subject was finally settled in *Rex v. Benneworth*. That being so, the question is then, whether it sufficiently appears that the pasture feeding was to be in Barnham? and the case resolves itself into the question, what was the meaning of the contract between the parties? I take it to be clear that the feeding on pasture was to be in the parish of Barnham, for the cottage which was necessary for the due performance of Stubbing's duty as shepherd was in that parish, and the actual feeding of the sheep on pasture in Barnham is found to be worth more than 10*l.* a year. The pauper's husband therefore came to settle on a tenement of 10*l.* per annum in Barnham. On the other question as to the effect of the certificate, I agree that it should be further considered." *Patteson, J.* "I think that in this case there was a taking of a tenement by Stubbings; the only difficulty is as to its locality. *Rex v. Darley Abbey* (14 East, 281, *ante*, 597,) shows that the meaning of the parties as to the place where cattle are to be pasture-fed, may be collected from the subject-matter of the contract, and the other circumstances of the case. That being so, I infer from the facts found by the sessions, that the going was to be in the parish of Barnham, for the cottage was in that parish, and the value of the pasture feeding there is found to be of the value of 10*l.* As to the question on the certificate, that may admit of some doubt." *Cur. adv. vult.* Lord Tenterden, C. J. now delivered the judgment of the court: "We have already decided that the agreement between Chambers and Stubbings, that the latter should have the going of 105 sheep with his master's flock, was a taking of a tenement in Barnham parish within the meaning of the statute 13 & 14 Car. II. c. 12. The point reserved for consideration was, whether Stubbings was to be looked upon as having resided in that parish under a certificate, so as to prevent the husband of the pauper from gaining a settlement by hiring and service with him. It was urged that as Stubbings could not acquire a settlement by the taking of a tenement until he had resided forty days in the parish, he must at all events be considered as having resided for those forty days under the certificate, and consequently that the pauper had not served him for a year after the certificate was discharged. It appears to us, how-

ever, that Stubbings is not to be considered as having resided in Barnham under the certificate during any part of the year; for he came to settle on a tenement of the value of 10*l.*, and was therefore irremovable as soon as he came into the parish. He never resided there under the certificate. The pauper's husband, therefore, was not serving a person residing under a certificate. If there had been no certificate whatever, the case would have been just the same. Stubbings was irremovable as soon as he came to settle on the tenement, and gained a settlement when he had resided forty days." Order of sessions confirmed.

Rex. v. Benneworth, 4 D. & R. 355; 2 B. & C. 775. Removal of James Fletcher from Benneworth to Calcethorpe. Order quashed. Case:—In 1803, the pauper (a married man) was hired by yearly hiring as a confined labourer in husbandry, with Day, of Calcethorpe, farmer. The pauper had, according to agreement, a house and garden, and a rood of potatoe land, and the keep of a cow on his master's land. The cow was instead of so much money for wages. The pauper remained in Day's service eleven years, during which time, namely, in 1813, the pauper's cow failed in milk, on which account, through the kindness of his master, and not in consequence of any bargain, the pauper had in the place of the former cow two heifers kept for him by his master on his master's land for about eleven months. The potatoe land and keep of the two heifers were together of the value of 10*l. per annum*. But the potatoe land and keep of one cow were below that value. On leaving Day, the pauper went to live as a confined labourer with Briggs at Scamblesby, with whom he remained five years. For the last three years of the pauper's service with Briggs, the pauper was relieved in Scamblesby by the parish of Donnington. At the expiration of the pauper's service with Briggs, Donnington took him and his family to their parish, and put them into a cottage in Benneworth, where they continued to relieve them till 1822. *Cur. adv. vult.* Abbott, C. J. delivered the judgment. "We are all strongly impressed with the inconvenience of considering a settlement to be gained under circumstances like the present; and under that impression, we thought it right to consider the subject before we delivered our judgment. We have done so; but we find the law so firmly established,—that a perception of the profits of land by the mouths of cattle, is a tenement within the meaning of stat. 13 & 14 Car. II. c. 12, and that an occupation of a tenement of the yearly value of 10*l.* will give a settlement, whether the rent be paid in money or in labour, and even if the occupation be gratuitous and no rent paid,—that we do not think ourselves at liberty to unsettle this doctrine; and consequently we are of opinion that a settlement was gained in Calcethorpe. The inconvenience is retrospective only: the law, so far as it regards a case of this kind being altered by the 59 Geo. III. c. 50. So that no person need now abstain from such an act as is disclosed in this case, through the fear of bringing a burthen upon his parish." Order of sessions quashed.

In this last case, the keep of the heifers is found not to have been in consequence of any bargain, and was therefore supposed to be inconsistent with the previous doctrine, that the perception of the profits of the land by cattle would not be a tenement, unless it was a part of the contract that they should be pasture-fed.

Rex v. Langrville, 10 B. & C. 899. Upon appeal against an order of two justices whereby E. Ewerby and his wife were removed from Langrville to Stickney. The sessions quashed the order. Case:—In the year 1800, the pauper became a confined labourer to a Mr. Dickenson, in the parish of Langrville. He was to have thirty guineas a year, a house, two gardens, and a rood of potatoes. After the bargain was made, his master said he might have the milk of a cow, and shortly after going into the service he had a cow, which was fed upon a close of his master's during that season of the year when cattle are pasture-fed. The value of the house, gardens, and the rood of potatoes, was under 10*l.* a year, but with the addition of the keep of the cow upon the land amounted to more than that sum. The court of quarter sessions were of opinion that the pauper gained a settlement in Langrville by residing there more than forty days, and occupying as above stated.

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A pauper was hired for a year, and had by agreement a house and garden, a rood of potatoe land, and the keep of a cow on his master's land. After the pauper had served ten years, his cow failing in milk, the pauper had in lieu of the cow two heifers kept for him, through the kindness of his master, and not in consequence of any bargain. The potatoe land, and the keep of two heifers, were of the annual value of ten pounds; but the potatoe land, and the keep of the one cow, were of less annual value than ten pounds: Held, that the keep of the two heifers was a tenement.

No settlement will be gained by the having the milk and feed of a cow, unless the person having it has an interest as tenant or occupier therein, and not by mere license, nor unless it is part of the contract that the cow should be pasture-fed.

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Lord Tenterden, C. J. now delivered the judgment of the court. "The question in this case is, whether a settlement was gained by the occupation of a tenement of the yearly value of 10*l.* in the parish of Langrville. In order to constitute this species of settlement under the 13 & 14 Car. II. c. 12, it is necessary that the pauper should have an interest in the subject of the occupation (such subject being of the requisite yearly value) as tenant or occupier, though it is not necessary that he should be under an obligation to pay rent, or that he should have more than an estate at will, (*Rex v. Fillongley* 1 T. R. 458, *post*, 629.) It has also been established by a series of cases, which were considered and confirmed in that of *Rex v. Benneworth* (2 B. & C. 775; 4 D. & R. 355, *ante*, 603), that it was a sufficient occupation of a tenement, if a pauper had an interest in a part of the profits of the land by perception by the mouths of his cattle. But it is essential, whether the subject of occupation be the land itself or a part of its profits, that the pauper should have an interest as tenant or occupier; a possession by mere license without that interest is not enough. If a person were permitted by the owner of a pasture to feed his cow or sheep upon it for a time without any valuable consideration, and without any reference to any contract between them, but by a mere act of charity or favour, no settlement would be gained by such a permissive enjoyment of the produce of the land. But if there had been a contract with the owner for a sufficient consideration, by which the pauper had a right to part of the profits of the soil to be taken by his cattle, he would have an interest, and his occupation with that interest (if those profits were of the requisite annual value) would confer a settlement after a residence of forty days. In the case of *Rex v. Benneworth*, which was so much relied upon in the argument of this case by the counsel for the appellants, as an authority that a gratuitous occupation was sufficient, it appeared that two heifers were substituted by the consent of the master for the cow which the pauper had a right by his contract to feed on the master's land. The pauper therefore may be considered as having had, by the act of the owner of the soil, as much interest in the land by the feeding of the heifers, as he had before by the feeding of the cow. The perception of the larger portion of the profits by the former was equally referable to an interest in the land, as that of the smaller portion by the latter. In the present case, however, the sessions find that the master gave permission to the pauper to have the milk of a cow after the bargain was completed; and though it be taken that the cow was fed on the land, and that he meant at the time that the cow should be fed on the land, (which however does not distinctly appear, nor is there any thing to show that he would not have kept his promise, and even performed his contract, if the milk formed part of the bargain, by allowing the milk of a cow fed otherwise than on the land,) we think this must be considered as having been done in consequence of a mere act of kindness or favour of the master, not referable to any contract, and that no interest was thereby acquired by the pauper in the profits of the land, consequently no settlement was gained by him in the respondent parish of Langrville. The order of sessions must therefore be quashed." Order of sessions quashed.

Renting pointing places in a mill, not fixed in the floor, is not a tenement.

Rex v. Dodderhill, 8 T. R. 449. Removal from Ipsley to Dodderhill confirmed. Case:—The pauper Barnet went in 1791 to reside at Dodderhill, where he continued three years: during that time, being by trade a needle-maker, he worked for W. Webb in that trade at six pointing places in his mill, and afterwards W. not having in general use for more than four of them, B. rented of W. two of the said pointing places for more than one year, at the yearly rent of 16*l.*, but Barnet was to do all W.'s work in preference to that of any other person, although to do it it might be necessary to use all the six pointing places; and B. was paid by the piece for all the work he did for Webb. No particular places were let to B., but by his contract with W. he might have the use of any two he pleased; but work or no work, W. was entitled to his rent of 16*l.* a year for the two places. The mill belonged to W. The pointing places are frames of wood, which support the spindles on which grinding stones turn, which are moved by means of leathern straps communicating with the great wheel of the mill, which is turned by water.

The pointing places are placed on the floor of the room, and at each end of them a man sits; and the needles are pointed by being pressed against the grinding stones. The court were of opinion that there was no pretence for calling this agreement to work in the mill, the taking of a tenement. (a)

Rex v. Tardebigg, 1 East, 528. Removal from Tardebigg to Alvechurch quashed. Case:—The pauper's husband took three runners for scouring needles in a mill belonging to Milward in Tardebigg, and a packeting room, at 1s. a packet for every packet scoured thereat. He took afterwards at different times other runners and another packeting room of another person. The runners were a part of the machinery, fixed to the floor of the mill with screws. The pauper's husband and his family slept in this mill for two years. One floor of a mill will contain several runners. He had the exclusive right to the use of these runners and the packeting rooms. He also took a cottage of Milward, and the rent altogether amounted to more than 10*l.* per ann. Lord Kenyon, C. J. "There is no distinguishing this case from *Rex v. Dodderhill*. A runner is no more a tenement than a pointing place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a license to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose." Lawrence, J. said, that "*Rex v. Whitechapel* (post) did not apply here, for here the particular value of the runner is found, which is necessary to be taken into the account to make up the 10*l.* a year, and that not being a tenement, cannot confer a settlement; besides, it is not even stated that the runner was in the packeting room which was appropriated to the pauper's use."

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Nor runners for scouring needles, though they be screwed to the floor of the mill and of the annual value of ten pounds.

Rex v. Mellor, 2 East, 189. Removal from Bramhall to Mellor confirmed. The pauper took a house at Stockport, of the value of 5*l.* a year: and he also took from the owner of a mill in S., worked by a steam engine, a standing place in a room for a carding machine of his own, which was worked by the machinery of the engine, and fastened to the floor and the roof of the room. He was to pay his landlord 20*l.* a year, and agreed that each should give the other three months' notice to quit. He had a key to the room, (as had other persons using the room in a similar way,) and the owner had a master key. It was urged against the order of sessions, that the only thing let was the place in the room where the machine was to be fixed: and that therefore the taking was of that part of the tenement itself, and not of the machinery itself, as in former cases. Grose, J. "This was a contract for nothing more than a liberty for the pauper to stand and work his machine in a room of the mill." Lawrence, J. said, that "this was only a license to use the machinery of the mill, and not a letting of any part of the mill itself, and that therefore no settlement could be gained by it." (a)

Nor standing place in a mill for a carding machine.

Rex v. Caversham, 4 B. & C. 683; 7 D. & R. 160. The pauper, a butcher, agreed to occupy one of the several stalls in Reading market at 2*s.* 6*d.* per week. The stall was a permanent building, furnished with a door capable of being locked, and the key was in pauper's possession; but he had a right of access to the stall only on Wednesdays and Saturdays. Bayley, J. "I incline to think that this was a tenement within the statute of Car. II." The case was decided on another point. (See post.)

Butcher's stall.

(a) *Rex v. Hammersmith*, 8 T. R. 450, n. The pauper's father, Rogers, covenanted with B., the owner of a corn-mill, that he would with his horses and carts deliver and grind at the corn-mill a certain quantity of corn weekly, and pay B. per load. B. agreed, that during the time, Rogers should have the use and liberty of running and grazing fifteen horses in a named meadow, and the use of the stable and cart-house gratis. B. agreed at the expiration of the time to take the utensils of the corn-mill at

an appraisement, and pay Rogers the amount. Rogers ground at the mill for two or three years, and resided in the parish. The court were clearly of opinion that there was no colour for construing this agreement into the taking of a tenement. Order confirmed.

In *Rex v. Iken*, post, 619, Patteson, J. observed on this case, that if it was properly decided, the only ground is, that the meadow was ancillary to the grinding, and not a letting of the land.

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The pauper took a house consisting of a house-place, a chamber over it, and above that a garret, which extended over the lower rooms in the adjoining house. He afterwards took the adjoining house, in addition to the rest of the premises, from the same landlord, for a year, at 10*l.* rent. The whole was under the same roof, though there was no internal communication. He dwelt in that part which he first hired, and put a journeyman to work in the other. It was held that he gained a settlement under the 6 Geo. 4, c. 57, by renting a tenement consisting of a distinct building.

3. WHAT IS A TENEMENT UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57; AND 1 WILL. IV. c. 18.

By these statutes (*ante*, 583), which in this respect are the same, the *tenement* must consist of a *separate and distinct dwelling-house or building, or of land, or of both*. In *Rex v. St. Andrew's, Cambridge* (*ante*, 592), there was a demise of a house *and tolls* at an *entire* rent; and Bayley, J. thought that this was not a tenement within the 6 Geo. IV. c. 57. The case was decided on another point.

Rex v. Macclesfield, 2 Bar. & Adol. 870. Upon appeal against an order of two justices, whereby W. Hooley and his wife and son were removed from Adlington to Macclesfield. The sessions confirmed the order. Case:—The pauper, who was a silk weaver, and used to employ journeymen and had looms of his own, about September, 1826, took a house in Compton-row, Macclesfield, at 2*s.* 6*d.* per week. The house consisted of a house-place, a chamber over the house-place, and over that there was a garret, which extended over the lower rooms in the adjoining house. About six months after the first taking, the pauper took the adjoining house under his garret, and under the same roof, from the same landlady, and paid 4*s.* per week for the whole together. In a week or two the pauper called on his landlady, and agreed with her for the whole premises at the same rate for a year. He occupied the premises for nearly two years, paying the rent sometimes once a fortnight and sometimes once a month, as he found it convenient, and the whole rent was paid. He furnished the new part and put into it a journeyman who worked for him, and who paid the pauper 1*s.* 6*d.* per week for it. At one time pauper's step-son, a married man with a family, slept in the new part, the pauper having put a bed in it. The step-son paid the same rent which the pauper did. This was before the pauper let it to the journeyman. There was a passage under the chamber floor and betwixt the two houses, which went from the public street to other houses, and there was no internal communication betwixt the two houses. Lord Tenterden, C. J. "I should have been better satisfied if the justices in sessions had themselves found that these premises formed one distinct building. But it seems to me that they have found so in effect, for it is stated that the whole was under the same roof; that being so, it is a distinct building, which satisfies the words of the act." Parke, J. "We must take it from the facts stated in the case that this was one distinct building. I am by no means satisfied that the occupation of a dwelling-house and another distinct building in the same parish may not be sufficient to confer a settlement. The object of the act was to exclude all questions about the occupation of rooms. It appears to me not to be less a tenement within the meaning of the act where one detached house is occupied with another. It is not, however, necessary to decide that point here. That there was a sufficient occupation by the under-tenant is settled by *Rex v. Great Bently* (10 B. & C. 520), though that will not be sufficient since the new statute 1 Will. IV. c. 18, which requires an occupation by the person hiring the premises." Taunton, J. "To prevent any misconstruction, it must be understood that the court decides on the statement of the facts in this case. It is stated that one garret went over both houses and they were under one roof. It may be too much to say that two dwelling-houses can constitute one distinct dwelling-house, but this is a separate and distinct building. Then there has been an occupation within the words of the act, which does not say by whom the tenement is to be occupied." Patteson, J. "It is not necessary now to decide whether the occupation of two distinct dwelling-houses or buildings in different parts of a parish will be sufficient or not. This was one distinct building under one roof." Order of sessions quashed.

Rex v. Tadcaster, 4 Bar. & Adol. 703; 1 Nev. & Man. 466, S. C. Appeal against an order of removal from Leeds to Tadcaster. Case:—William Silversides, the late husband of the pauper, being settled by apprenticeship in Tadcaster, went to reside in Leeds, and in November, 1827 (subsequently to the passing of the act of 6 Geo. IV. c. 57), took a dwelling-house within

A pauper in November, 1827, took a dwelling house of A. at rent of 6*l.* 10*s.* In May, 1828, he took of B. a sepa-

the latter township as tenant to W. W., and occupied the same until September, 1830, at the yearly rent of 6*l.* 10*s.*, which rent was duly paid for all that period. In May, 1828, he also took a building used as a shed, where he carried on his business of a bricklayer, situate in Leeds, as tenant to R. M., and occupied the same until September, 1830, at the yearly rent of 5*l.*, which rent was also duly paid for that period. The dwelling-house was wholly separate and distinct from and unconnected with the other building, there being a separate and distinct tenement between them belonging to and occupied by another person. The question for the opinion of the court is whether, under these circumstances, W. Silversides gained a settlement in Leeds. Lord Denman, C. J. "It has often been observed that under the statute of 12 & 13 Car. 2, the word 'tenement' has received a wider construction than the legislature intended to give to it; still we must be bound by the cases which have been decided upon the subject, unless it clearly appears that by some of the later acts an alteration has been made in this respect by the legislature. Now it appears to me that the legislature has not, by any of the more recent enactments, hit this precise case. The same construction has been put upon similar words in the 59 Geo. III. In *Rex v. Stowe*, Abbott, C. J. says, 'It has been contended that the legislature must have meant the having occupation and payment to be for the same year. If that had been their intention, it would have been easy to say that the occupation and payment should be for *such* term.' Holroyd, J. says, 'If it had been intended that the occupation should be for the same term as the hiring, the legislature would probably have introduced the words *for the said term*.' It seems to me that the words 'nor unless' have been used in order to divide the sentence, and to elude the construction now contended for on behalf of the appellants. The 6 Geo. IV. makes an alteration, but, as it appears to me, not an alteration which affects this case. That act says, 'unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both.' I think it would be too much to say that the collocation of the words in this sentence will prevent the acquisition of a settlement by the occupation of any two of the three things there enumerated." Littledale, J. "I am also of opinion that a settlement was gained by renting the house and shed in this case. There has been a discussion as to the meaning of the word 'tenement.' A *tenement* means that which a man holds, and it is immaterial whether he holds it of one man or of two, or more. The object of the statute was that a man, to gain a settlement, should hold premises to a certain amount, whether they were taken jointly or by distinct takings. Suppose three fields are taken by different hirings, this would not be, as is contended, a tenement. Or suppose a man to take half a field of one person, and half a year afterwards hires the remainder of another landlord, this would not, according to the argument, be an entire tenement. But I think that the meaning of the word 'tenement' is not confined to what a man takes at one time. Then it is said that under the words 'shall consist of a dwelling-house or building, or of land, or of both,' it is not competent to join a dwelling-house and building. The language of the legislature is incorrect, but I think that a house and building may be connected; and I will even go further, I think that the word 'both' may mean all three put together." Parke, J. "I am not sure that by our decision we are giving effect to the intention of the legislature, but that intention is most obscurely expressed. In *Rex v. Macclesfield* (*ante*, 606,) I inclined to think that the occupation of a dwelling-house and another distinct building might confer a settlement. If they cannot be connected together, then a distinct house and a pigstye, taken at an entire rent of 100*l.* would not confer a settlement. Or suppose a house and detached building of the value of 19*l.* a year, or a house and pigstye of the value of 11*l.*, if they cannot be connected together, then in each case a question as to the apportionment of the rent might arise. I cannot think that the legislature meant that all these questions as to value should be raised. A great deal of litigation will be prevented by the construction which we are putting upon the act. *Rex v. North Collingham* (*post*, 611,) has decided that a tenement may be held under two distinct hirings.

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rate shed at a rent of 5*l.* He occupied both until September, 1830: Held, that he gained a settlement under the 6 Geo. 4, c. 57.

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A person rented two houses under one continuous roof, having distinct outer doors and no internal communication: he took the whole at one hiring, but paid distinct rents for them of 6*l.* each per annum; occupied one house himself, and allowed his son exclusive possession of the other. It was held, that by such renting and occupation for a year he acquired a settlement under 6 G. 4, c. 57, s. 2.

A person hiring a house and stable for a year in a parish under different landlords, at rents amounting together to 10*l.*, holding such house and stable, and residing in the house for the year, and paying the whole rent, acquired a settlement in such parish under the act 59 G. 3, c. 50, though the house and stable were entirely separate from each other.

A shop held jointly with an adjoining house, with which it has an internal

For these reasons I am of opinion that the order of sessions ought to be quashed." Order of sessions quashed.

Rex v. Iver, 3 Nev. & M. 28; 2 Adol. & Ellis, 228. On appeal against an order of justices removing Edward Ewer from Iver to Rickmansworth. Order quashed. Case:—The pauper never gained a settlement in his own right. His father, Henry Ewer, in 1823 took a house in Iver of Mr. Franklin, for which he paid 6*l.* per annum, and also 1*l.* per annum for a piece of land. In the adjoining house, also belonging to Mr. Franklin, lived another tenant of the name of Dean. No other building adjoined either of the two houses; there was no internal communication between them, and there was a separate outer door to each. Each house had a chimney running up back to back in the partition wall between the houses, and there was one continuous roof over the two houses. A few days previous to January, 1830, Dean quitted, and Henry Ewer proposed to Mr. Franklin to take Dean's house instead of his own. Mr. Franklin agreed, if Henry Ewer could find a tenant for the other. Henry Ewer brought his son William Ewer to Franklin, who refused to take him as tenant. Henry Ewer then agreed with Franklin to become tenant for the whole, and to pay 6*l.* for each house, and 1*l.* for the land; that is, 13*l.* a year; and thereupon Henry Ewer went into the occupation of Dean's house, and let his son into the possession of the other, and the son with his family continued in the occupation thereof till Michaelmas, 1831, when he quitted, and Henry Ewer thereupon gave up that house to Mr. Franklin, who put in another tenant. Henry Ewer paid the 13*l.* rent to Michaelmas, 1831, and Mr. Franklin gave him at each Michaelmas a separate receipt for the rent of each house. From 1823 to Michaelmas, 1831, no alteration was made in the two houses. While the two houses were occupied by Dean and Henry Ewer, and subsequently while they were occupied by Henry Ewer and his son, the occupier of each house was separately assessed to the poor-rate. Henry Ewer did not pay his son's poor-rate, nor did he use any part of his son's house. The question for the opinion of the court was whether Henry Ewer gained a settlement in Iver by renting a separate and distinct dwelling-house or building. Lord Denman, C. J. "It is obvious that in this act the legislature had something in view which it is very doubtful if they have effected. We will take time to look into the statutes." *Cur. ad. vult.* On a subsequent day in the same term Lord Denman, C. J. said, "In *Rex v. Iver* we are of opinion, on reference to the statutes, that the renting of the two houses did confer a settlement under 6 Geo. IV. c. 57. The order of sessions will therefore be confirmed." Order of sessions confirmed.

Rex v. Gosforth, 3 Nev. & M. 303; 1 Ad. & El. 226. On appeal against an order removing Ann Burkett from Whitehaven to Gosforth, both in Cumberland, the order confirmed. By the case it appeared that the pauper's alleged settlement in Whitehaven was derived from her father. The father, while the act 59 Geo. III. c. 50, was in force, namely, in 1823, hired for a year, of a Mr. Falcon, a dwelling-house in the township of Whitehaven, at the yearly rent and of the yearly value of 8*l.* He also hired for the same year a stable in the same township, of a Mr. Grayson, at the yearly rent and of the yearly value of 6*l.* 6*s.* The stable was not under the same roof with the dwelling-house, nor immediately contiguous or appurtenant thereto, but stood in a different street upwards of two hundred yards off. He held and occupied both the dwelling-house and stable, and dwelt in the dwelling-house for the whole year, and paid the whole year's rent for them. The question was whether, by the occupation of a dwelling-house and stable under these circumstances, the father acquired a settlement in Whitehaven. Lord Denman, C. J. "That observation strengthens the authority, since the court, notwithstanding the opinion so expressed, felt themselves bound by the decision. The order must be quashed." Patteson and Williams, Js. concurred. (*Littledale*, J. was absent.) Order of sessions quashed.

Rex v. Rickinghall Superior, 1 Nev. & M. 47. Thomas Churchyard, his wife and eight children, were removed from Rickinghall Superior to Wortham. Upon appeal the court of quarter sessions quashed the order. Case:—The

respondents proved a *prima facie* settlement in the appellant parish, upon which the appellants proved that at Lady-day, 1828, the pauper, who was a cordwainer, hired a dwelling-house in the respondent parish at the yearly rent of 9*l.* 9*s.* from the ensuing Michaelmas, but he immediately entered into the occupation, and at the Michaelmas paid half-a-year's rent. He continued to occupy the dwelling-house under such hiring from Michaelmas, 1828, to Michaelmas, 1829, and paid rent for the same at Michaelmas, 1828; he likewise hired of the same landlord and occupied from the same Michaelmas, 1828, to Michaelmas, 1829, at the rent of 1*l.* 5*s.*, a room which he used as a shop, the room being part of another dwelling-house in the same parish, and distant about four yards from the house in which the pauper lived, and he duly paid rent for the same. This room had an internal communication with such dwelling-house by a door, which door was locked on the pauper's going into occupation. It had also an external communication with the street by a door, by which the pauper entered it. The sessions have found the room to be a separate and distinct building. The question for the consideration of the court is, whether since the passing of the 6 Geo. IV. c. 57, a settlement can be gained by renting a dwelling-house at the rent of nine guineas, and a separate and distinct building in the same parish at the rent of 1*l.* 5*s.* The court said, "It is very clear the finding is not warranted by the premises as stated in this special case. We cannot send this case back to the sessions to be re-stated. If the case were sent back and the facts only were stated, we should not find this to be a separate building; and if the finding were the same, namely, that the room is a distinct and separate building, and the facts from which that conclusion is drawn were not stated, injustice would be worked." Order of sessions confirmed.

Rex v. Wootton, 3 Nev. & M. 312; 1 Ad. & E. 232. On appeal against an order removing Robert Hall and his family from Wootton to St. Mary in Wallingford, the sessions quashed the order. Case:—The pauper Robert Hall being legally settled in the parish of St. Mary, about the year 1800 became tenant of a cottage in the parish of Wootton at the yearly rent of 8*l.*, and resided in it with his wife and family until February, 1832. In April, 1827, a son-in-law of the pauper Robert Hall applied to Hall's landlord, Mr. Harris, and wished to become his tenant of another of his cottages in a different part of the parish of Wootton. Harris declined taking the son-in-law as his tenant, but agreed to let the cottage to the pauper at 5*l.* a year. The pauper never occupied this last-mentioned cottage, but on the same day he let it at the same rent to his son-in-law, who immediately took possession of it and resided in it for about three years and a half, when he quitted it, and the possession thereof was forthwith given to and accepted by Mr. Harris. The rent for the cottage occupied by the son-in-law was paid by him to the pauper, who paid the rent for both the cottages to Mr. Harris, and Harris gave a receipt for the same, amounting to 13*l.*, stating that such sum was paid by the pauper for one year's rent of the two cottages. *Littledale, J.* (Lord Denman, C. J. was attending the Privy Council.) "I think that in this case a settlement was gained. It is nearly the same in its circumstances as *Rex v. Iver* (3 Nev. & M. 28; 1 Ad. & E. 228; *ante*, 608), but independently of that decision, I think the sense of the words in question is not confined to a single dwelling-house. The tenement, by renting which a settlement may be gained, is described in nearly the same words in the three statutes 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 W. IV. c. 18; and I take the meaning to have been that the tenement should consist of something in the nature of land; not, for instance, tithes, but something capable of a regular occupation. If such a case as this be not included, the language of the act so far fails to operate according to the intention. Looking at the words, 'a separate and distinct dwelling-house, or building, or land, or both,' I think it makes no difference whether two or more of these descriptions of tenement be held, or one distinct and separate one of either kind. All that is requisite is, that the tenement, in respect of which a settlement is claimed, shall be either one or another of those three, or several of any. The meaning of the word 'tenement' has been narrowed by these acts, but not to the extent contended for." *Patteson, J.*

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communication, is not to be considered as a distinct and separate building. Where upon a special case facts are stated which warrant the judgment of the court below, but that court has drawn an inference which is not warranted by the statement, the order will be confirmed without sending the case back to be re-stated.

A settlement was gained under 6 Geo. 4, c. 57, by renting under distinct hirings of the same owner, for the same year, two dwelling-houses, (one of which the tenant underlet, and never personally occupied) at the rents of 8*l.* and 5*l.* a year, in different parts of a parish.

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"*Rex v. Macclesfield* (2 B. & Ad. 870; ante, 606) does not go so far as this case; the decision, if it had gone to that extent, would have been extra-judicial. But I am of opinion that the renting here also was within the act. I have always thought that the words, 'a separate and distinct dwelling-house or building,' in these statutes, meant separate and distinct as to any other person, that the tenant should not hold part of a house. But the renting to give a settlement may be of more than 'a dwelling-house, or building, or land, or both, in the limited sense contended for.'" *Williams, J.* "The act 59 Geo. III. c. 50, was introduced to avoid those perplexing discussions which had arisen as to the kinds of tenement which had before that time been held to confer a settlement, and which being sometimes made up of small items, as for instance, a cow, tenement, and potatoe land (see *Rex v. Benneworth*, 4 D. & R. 355; 2 B. & C. 775; ante, 603), were very litigious and vexatious. That statute therefore was introduced, confining the description of the tenement in question to land and houses and buildings. But then it became necessary to provide against the joining together portions of different houses to make up a tenement, which would still have left great room for dispute, and therefore it was enacted in 59 Geo. III. c. 50, (and the enactment was continued in the subsequent statutes,) that the dwelling-house or building must be separate and distinct, and I agree that if they be not so a settlement cannot be gained. But the meaning of the legislature in using the words, 'a separate and distinct dwelling-house and building,' no doubt was, that there should be entire holdings, and that settlements should not be gained by a split or subdivided tenement. In this case two things were held by the tenant, both of which are within the express language of the act, he therefore gained a settlement." Order of sessions confirmed.

4. *The Tenement need not be entire.*

4. THE TENEMENT NEED NOT BE ENTIRE UNDER ANY OF THE STATUTES.

North Nibley v. Wootton-under-Edge, 1 Sess. Ca. 73; 2 Bott, 163. A person rented an ale-house from Lady-day to Lady-day for 6*l.* a year; and in May following rented a piece of land, of the yearly value of 8*l.*, to the following Lady-day, at 5*l.* 10*s.*; after holding the same about two months, he ran away. The Chief Justice: "I do not see why this should not gain a settlement, for he rented a house of 6*l.* a-year, and land at 5*l.* 10*s.* a-year, which does gain a settlement; and he might have come again if you had not sent away his wife and family. Indeed, had he taken the meadow but for a month, I think he would not have gained a settlement, though he paid a rent proportionable to the whole year; for then it would have appeared that he was not thought of sufficient ability to be trusted with it for a whole year. The other judges said, this was a renting of a tenement of 10*l.* per annum, within the meaning of the statute, and that the settlement arose from the value of the lands and tenements that he rented; for by reason of that he was not likely to become chargeable." Both orders quashed.

A house of six pounds a-year, rented of one man, and a stable of two pounds ten shillings a quarter, of another man, is an entire tenement, and gains a settlement, although he is not rated for the stable.

Rex v. St. Margaret, Fish-street-hill, Burr. S. C. 677; 2 Bott, 118. S., residing at Clapham, at his own house, contracted and employed the pauper's father to supply him with a pair of coach-horses for a quarter of a year, at 22*l.*; and the pauper's father contracted with the said S. for a stable belonging to the said S., and was to pay 2*l.* 10*s.* a quarter for it; and the said S. reserved a separate stable for his own use. This contract was performed between the parties for two years and upwards. About the latter end of the fourth or fifth quarter, S. threatened to discharge him, but on the importunity of his friends, he agreed that he should continue to furnish him with a pair of horses; and that S. should pay him only 20*l.* a quarter, and have the like quarterly allowance for the use of his stables as before. Under and in pursuance of this contract, they agreed and acted for several years until the pauper's father died, who during the whole of the time rented and lived in a tenement of 6*l.* a year in Clapham, but he was never rated either for his house or the stables. The justices removed the pauper from Clapham to St. M., and the sessions confirmed the order. In support of this removal it was contended, that this was not an independent contract

for the stables, but a mere deduction from the price of the job-horses, on account of their standing in S.'s own stables, and that no rent would be payable when the job was at an end. But the court, after taking time to consider, thought the agreement, though awkwardly pursued, was a contract for the stable. *Aston, J.* "There can be no doubt but it is a good renting. Suppose the master had paid the servant his whole wages, might not he have brought an action for the occupation and use of the stable?"

Rex v. North Collingham, 1 B. & C. 578; 2 D. & R. 743. Mary Barks, the widow of William Barks, was removed from North Collingham to Fulbeck. Order discharged. Case:—The pauper's husband came to reside at North Collingham in 1812, where he hired a house, (being a separate and distinct dwelling-house,) with a garden for a year, and from year to year, at the annual rent of 6*l.* 6*s.*; and he continued to hold and occupy such house and garden, and paid the rent for the same from 1812, to his death in December, 1821; but during the last four years of his holding the house, he let to a lodger, at thirty shillings a year, one of the rooms on the ground floor. The room communicated with the yard appurtenant to the house by an outer door, and with the adjoining rooms of the house by an inner door, of which doors the lodger kept the keys. As there was another outer door to the house, no alteration was made in the house or doors during any part of the period for which Barks was tenant. The room was let unfurnished, and the lodger occupied nothing but the room, and Barks was assessed and rated for the entire house to the poor, the highways, and king's taxes, and paid such assessments during his tenancy. In 1819, (a) the pauper, *bonâ fide*, hired a piece of garden ground in North Collingham, for a year, at the rent of 3*l.* 15*s.*, which ground he occupied for a year, and paid the rent, and continued in the occupation thereof up to the time of his death.—*Abbott, C. J.* "The question arises on the construction of the statute 59 Geo. III. c. 50, which was made for the purpose of restraining the acquisition of settlements by renting tenements. It is a general rule, that acts in *pari materiâ* shall receive a similar construction. Before the passing of the act, a party might gain a settlement by taking various tenements at different times. The question is, whether, since the passing of the act, the tenement must be taken at one rent, and at the same time? [He then read the statute, which see *ante*, 583.] Now by this act it is not sufficient that the hiring should be of a tenement of the value of 10*l.* per annum, but the house must be held, and the land occupied, and the rent paid for one whole year; the first question is, whether the pauper held a tenement within the meaning of the statute. Under the former acts a tenement might consist of various parcels taken at different times, and there is nothing in this act to alter the old law in that respect." *Bayley and Best, Js.* concurred. *Holroyd, J.* "The word *tenement* in this statute must receive the same construction as it has in former acts, made in *pari materiâ*. The statute was only intended to alter the law in the particulars distinctly pointed out; and nothing is said to make it necessary that the whole of the tenement should be taken at one time." (See also *Rex v. Tadcaster*, *ante*, 606.)

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After the 59 Geo. 3, c. 50, the pauper held together, for a year, a house and garden, and paid rent for the same during that period. They were taken of different persons at different times. The rent of the house was six guineas: Held, that although there was a separate taking of the house and land, that this was a tenement within the meaning of 59 Geo. 3, c. 50.

5. THE NATURE AND NECESSITY OF A TENANCY.

Rex v. St. Mary, Newington, 1 Nev. & M. 357; 5 B. & Ad. 540. Appeal against an order of removal, whereby E. J. Sanders, his wife and child, were removed from St. Mary, Newington, to St. Mary, Islington. Case:—The pauper's *primâ facie* settlement derived from his father was admitted to be in the parish of Islington, and the question was, whether his father had acquired a subsequent settlement under the following circumstances. In the month of October, 1818, the pauper's father, the Rev. J. B. Sanders, entered into an engagement with the Rev. J. Mitchell, the rector of St. Nicolas Cole Abbey, Old Fish Street, London, to officiate as curate of that parish; and it was agreed that he should have 80*l.* per annum, and the rectory house to reside in free

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A licensed curate according to the 57 Geo. 3, c. 99, and residing in the rectory house pursuant to the same statute, and which was above the value of 10*l.* a year, for more than forty days before the passing of 59 Geo. 3, c. 50. It

(a) Admitted to be after 59 Geo. III. c. 50.

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was held that this was a "coming to settle" within the statute 13 & 14 Car 2. c. 12, and that a settlement was thereby gained.

of rent and taxes; and about that time he commenced his duties as a curate. On the 12th of December following the Rev. J. Mitchell nominated and appointed the pauper's father to be curate of the said parish, but the latter did not go to reside at the rectory house until a week after Christmas, 1818; and on the 2nd of February, 1819, a license was granted him by the Bishop of London, pursuant to the provisions of the stat. 57 Geo. III. c. 99, to perform the office of stipendiary curate in reading the common prayer and performing other ecclesiastical duties belonging to the said office, according to the form prescribed in the book of Common Prayer; and the yearly stipend of 80*l.* was assigned to him, to be paid quarterly, for serving the said cure, with the rectory house, wherein he was directed to reside, and offices, free of rent, repairs, and taxes. The pauper's father did all the duties of curate from October, 1818, till his death in the year 1829; and from a week after Christmas, 1818, till his death, he resided at the rectory house, which was a separate and distinct dwelling-house, worth more than 10*l.* a year, free of rent, repairs and taxes, and receiving the yearly stipend. The question for the opinion of the court was, whether the pauper's father, by occupying the rectory house in the manner stated gained a settlement in the parish of St. Nicolas Cole Abbey, Old Fish Street, London. *Denman, C. J.* "The kind of settlement relied upon in this case has grown out of the 13 & 14 Car. II. c. 12, s. 1, which confines the power of removal to cases where persons come to settle on any tenement under the yearly value of 10*l.* and by implication has been held to confer a settlement on a person who comes to settle on a tenement of that value; and the lawful occupation of a tenement of that annual value by a party in his own right, has been held to satisfy the words *coming to settle*. The word 'renting' is not to be found in the statute. It is true that this settlement is most generally considered to be acquired by renting, because the renting shows the occupation to be independent and for the convenience of the occupier, and not for that of the landlord; and on this principle many of the cases where a distinction has been taken between an occupation as tenant and an occupation as servant proceed: the statute however does not require that there should be an occupation as tenant, but a mere coming to settle; and here I think it quite clear that the pauper's father came to settle in the parish of St. Nicolas Cole Abbey." *Parke, J.* "It is not clear that the curate is not tenant to the rector; but it is not necessary for the purpose of gaining a settlement that he should be so. It is sufficient if he comes to occupy as having an interest of his own, and not as servant to another." *Taunton, J.* "The statute 9 & 10 Will. III. c. 11, which makes the *taking a lease* of a tenement of the value of 10*l.* per annum confer a settlement, is confined to persons residing under a certificate. To satisfy that statute, there must undoubtedly be a contract for renting; but this is a case within the 13 & 14 Car. II. c. 12, s. 1, which has been held to give a settlement to any person coming to settle on a tenement of the yearly value of 10*l.* The case of occupation is usually founded on the renting of a tenement of 10*l.* a year, yet it is not necessary that it should be under a renting, or in the character of tenant. Here the pauper's father had a lawful possession of a tenement of the required value, and an interest therein sufficiently permanent to denote a coming to settle; and that is sufficient to satisfy the 13 & 14 Car. II. even though the occupier is exempt from payment of rent, or has not the character of tenant. The case comes within the doctrine of the passage cited in the argument from Mr. *Nolan's Poor Law*, which, though not strictly authority, is entitled to respect." *Patteson, J.* "There was clearly a coming to settle by the pauper's father, unless the occupation of the curate is in all cases to be considered the occupation of the rector, which, it clearly is not. I do not see any analogy between this case and the cases of master and servant referred to in this argument." Order of sessions confirmed.

Pauper, in 1813, rented a tenement of the yearly value of 10*l.* The bargain with the owner was, that the pauper should live a month in it

Rex v. Helsham 2 B. & Ad. 620. Appeal against an order of removal of R. Wray and his wife from Market Weighton to Helsham. Case:—On the 1st November, 1813, the pauper Richard, being then legally settled in the parish of Helsham, came to reside on a tenement in the parish of Sculcoates of more than the yearly value of ten pounds. He entered upon it a fortnight after Michaelmas. The bargain with the owner of the tenement was, that

the pauper should live a month in it for nothing on trial; and that if he liked it he should take it at Martinmas, at the yearly rent of 14*l*. The pauper resided upon it for a month on trial, and then, according to the agreement above mentioned, took it at Martinmas, at the yearly rent of 14*l*., and without any interruption in the residence continued on it for the following month. He then quitted the parish altogether, and did not subsequently acquire any settlement elsewhere. Lord *Tenterden*, C. J. "I am of opinion that the pauper gained a settlement in Sculcoates. It is clear that he actually resided there more than forty days on a tenement of the yearly value of 10*l*. Then it is said that when he first came there he had not an absolute intention to settle for so long a time as forty days, but that it was his intention to try whether the premises would suit him; and if they did, then to stay for a year. There is no authority to show that the original intent of the party must be absolute and unqualified to continue for forty days, and I am unwilling to introduce a new term or condition to the gaining of a settlement by coming to settle on a tenement. Here the intention of the pauper was to stay for one month certain, and perhaps for a year; and it has been properly observed that the recital in the statute 13 & 14 Car. II. c. 12, does not import a permanent intent, but applies only to persons coming to settle for a short time." *Littledale*, J. "The statute 13 & 14 Car II. c. 12, does not require that the party should come to settle permanently, or should make a contract to occupy for a year. The time for which the tenement is taken is unimportant, provided there be an occupation for forty days. Accordingly, taking land from June till Lady-day following, or a house for five months, or a room for a week, has been held sufficient. (*Staunton-under-Barndon v. Ulescoft*, Burr. S. C. 558; *St. Matthew's, Bethnal Green, v. St. Botolph's*, Burr. S. C. 574; *post*, 632; and *Rex v. Whitechapel*, 2 Bott, 132, pl. 187; *post*, 641.) The question really is, whether the party, after he came to the tenement, was irremovable, and whether he resided there forty days? Here it depended on himself whether or not he would remove during that time. If he chose to continue after the first month he might do so by the terms of his contract, and he elected to continue and did reside forty days. He therefore gained a settlement, having an interest as tenant during the whole of that term. In *Rex v. Netherseal* (4 T. R. 258; *post*, 628), *Ashhurst*, J. says, 'that in order to acquire a settlement by taking a tenement of 10*l*. a year, it is not absolutely necessary that there should be an express contract for the tenement: it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord, for in such case the law implies a contract. Here the pauper resided during forty days with the consent of the landlord, and therefore gained a settlement.' *Parke*, J. "My first impression upon reading this case was that no settlement was gained by the pauper in Sculcoates; that in order to gain a settlement by coming to settle, there must be an intention to reside permanently; but I am now satisfied that I was wrong. The question turns upon the meaning of the words 'coming to settle,' and some light may be thrown on that point by the resolution of the judges of assize in 1633. One of them was, 'that the law unsettleth none who are lawfully settled, nor permits it to be done by practice or compulsion; and every one who is settled as a native, householder, sojourner, an apprentice, or servant for a month at the least, without a just complaint made to remove him or her, shall be held to be settled.' It would appear therefore from that resolution, that the word *settle* did not import any thing permanent. Here it is clear that the pauper's original intention was to reside for a month at least; and in fact he resided for two months, and in the character of tenant. He had an interest during the first month, though no rent was to be paid, and he afterwards had an interest in the premises for a year, and he resided during forty days, having during that time an interest as tenant. A person coming into a parish casually for some temporary purpose will not thereby acquire a settlement; but a person coming to reside in a house with a purpose of making it his home and continuing there for forty days, does by that residence become settled." *Taunton*, J. "The statement in the case, that the pauper was to live in the house a month on trial, created an impression in my mind that he

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for nothing on trial, and that if he liked it he should take it for a year at the rent of 14*l*. He resided on it for a month on trial, and then took it at the rent agreed upon, and without any interruption in the residence continued on it for the following month, and then went away. It was held that he thereby gained a settlement.

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had no interest in the premises during the first month sufficient to confer a settlement, but I am now satisfied that in that respect I was wrong. It appears from the case, that the bargain was that the pauper should live a month in the house for nothing on trial; and if on that trial he liked it, he should take it at Martinmas at the yearly rent of 14*l.* The intention was to ascertain whether the house would suit him, but at all events he was to have it for a month. The occupation during that month was by leave and license of the owner, who could not lawfully disturb him; he then took it for a year at a certain rent and occupied for a month, and the two occupations may be coupled together so as to make up the forty days. There are many cases to show that a tenant at will or by sufferance, not paying any rent, may gain a settlement by residing on a tenement." Order of sessions quashed.

A purchase of a crop of growing oats at an auction, is not a holding as tenant.

Rex v. Bowness, 4 *M. & Sel.* 210. Where a person rented and resided on a tenement of 4*l.* a year, and in the same year bought at a public auction, on 12th August, four lots of oats growing on the field, for 12*l.* 14*s.*, which oats were of different kinds, that ripened at different periods, and he began to reap them on the 14th September, and continued reaping them as they ripened, and carted them away at intervals between the 14th September and 3rd November, on which day he carted off the last load; the court held that he did not thereby acquire a settlement; and Lord *Ellenborough*, C. J. said, "It appears to me that it has been uniformly adopted as the rule for construing the statute of Car. II. as much as if the word itself had been inserted in the statute, that the *coming to settle in*, means by *renting* or holding in the character of tenant. It is true this word *renting* is not in the statute, but what is found in the subsequent statute, 9 & 10 Will. III. c. 11, shows pretty well how the statute of Car. II. was understood; for the subsequent statute enacts, 'that no person who shall come into a parish by certificate shall gain a settlement therein, unless he shall take a lease of a tenement of the value of 10*l.*' &c. Therefore, certainly this enactment was framed upon an understanding that the *coming to settle in* the stat. of Car. II. meant a taking under a letting or renting. Upon a subject like this, one is afraid to enlarge, lest what may be said should lay the foundation of future discussions. What has been said already upon the subject has, according to my understanding of it, reached the extreme limits of common sense. It is therefore sufficient to say upon the present occasion, that this was a purchase and not a renting, or in any way a holding as tenant, and upon that construction this person did not gain a settlement. I feel no inclination to extend the decisions upon this subject; indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute." *Le Blanc* and *Bayley*, Js. were also of opinion that no settlement was gained, upon the ground that the pauper had not a tenement of the value of 10*l.* by the year for forty days, because his interest diminished in value *de die in diem*, as he cleared the land, and it was consistent with the statement, that before forty days from the 12th August he had cleared so much as would reduce the tenement below the yearly value of 10*l.*

A servant may be a tenant.

Rex v. Melkridge, 1 *T. R.* 598. Case:—The pauper's father was appointed herd to several persons having a right of common on an extensive waste. He entered on his employment, and removed to a house situate on the common, where he resided several years. As a reward for his services, he was allowed the exclusive enjoyment of the house and some meadow ground adjoining. The house and ground were worth 20*l.* It was contended that he did not occupy the tenement as his own, but as servant of the commoners, who had no power to grant such license. But the court thought no doubt could be entertained on the question: the service of the pauper was equivalent to paying his rent, and that the commoners, instead of giving him wages, had permitted him to occupy this house. The pauper had the exclusive enjoyment of it, and possession could not be stated in stronger terms.

The pauper was hired as bailiff, at

Rex v. Minster, 3 *M. & Sel.* 276. (a) Removal from Bridge to Minster,

(a) This case has been doubted, but it is conceived not on the point upon which the judgment proceeded.

confirmed. Case:—The pauper, a few days before Michaelmas, 1808, was hired as bailiff by Parker, who had a farm at Bishopsbourne, and resided great part of the year about three miles distant. The agreement made between the pauper and his master was, the pauper was to have 10s. per week for wages; was to be allowed by his master pork at 5s. per score, and grist at 4s. per bushel, for the use of his family, these prices being lower than the general prices. His master was to find him a house, *and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm.* The pauper went into the service of Parker under the agreement at Michaelmas, 1808, and continued until Michaelmas, 1811, and he lived in the house of his master at Bishopsbourne, and occupied the kitchen and two rooms up-stairs, and his wife took care of the house. The pauper hired two cows, which fed during the summer in the pastures of his master, and in the winter in his master's straw yard with straw that was grown upon his master's lands. The rooms occupied by the pauper in the house of his master were not of the yearly value of 10*l.*, but the pasturage and keep of the cows upon the lands of his master were above that yearly value. After argument, Lord *Ellenborough*, C. J. said, "Here the pauper had a profit issuing out of the land to be taken *in loco certo*, which has been adjudged by the cases to be a tenement. The distinction between the occupation of a servant in the house of his master and this has been adverted to, and the argument, as it seemed to me, has been properly answered, that the apartments of the servant are only as an appendage of the service; they are allotted to him for the more convenient performance of the service, which is the principal thing. Here it is stated that the pauper hired two cows, and that they were kept on the land of the master during the summer months; and it does not appear that this was connected with the service, or that it was necessary, for the convenient performance of it, that he should have the two cows. In this respect, therefore, this case may be distinguished from that of servants having apartments in the houses of their master for the better discharge of their duties to their masters. The case now before the court falls within those which have been decided, particularly *Rex v. Melkridge* (1 T. R. 598; *ante*, 614), the only difference being, that there he was the servant of many persons, here he is the servant of one only; still the compensation for the tenement in both is the same, namely, the service of the pauper, which the court held to be equivalent to his paying rent." *Le Blanc*, J. "If this case depended upon any consideration involving the value of the apartments or lodging which the pauper occupied in the house of the master, I should not think the case of *Rex v. Melkridge* an authority that called upon us to decide in favour of the settlement; but it is stated that the yearly value of the pasturage, independently of the house in which the pauper resided, was upwards of 10*l.* That being so, the cases which have been determined have held, that whether the pauper pay in service or in money it shall be a coming to settle on a tenement. In this case, if the pauper's occupation of the tenement was necessarily connected with the service of the master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, for which the master might allot what apartments he pleased. In like manner, if the master had allotted to the pauper so much milk a day, I should have thought the pauper would not have gained a settlement. But in the present case the pauper has a distinct interest in the pasturage of the two cows, unconnected with his service to the master's dairy, and this liberty of taking the profits out of land is found to be of greater value than 10*l.* I do not know therefore how to distinguish this from the cases already decided." *Bayley*, J. "A clear and particular distinction enabling us to decide this case has been pointed out. Here something is given to the servant unconnected with the service. It is the same thing as if the servant had stipulated that as he had a family he must have certain land for his own occupation, and that the master should allow him to become a distinct occupier of land to the value of 10*l.* a-year. If that had

weekly wages, and allowed the feed of two cows in the pastures of his master. It was held that the feeding of the cows, being above the yearly value of ten pounds, gave the pauper a settlement.

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By one entire contract a master agreed to give his servant 20*l.* a year, a cottage to live in, and the agistment of one cow for his own services; and 28*l.* and the agistment of another cow in consideration of his lodging and maintaining in the cottage two of the master's labourers. The yearly value of the lands on which the two cows were depastured exceeded 10*l.*, but the yearly value of land sufficient to depasture one cow only would have been less than 10*l.*: Held, that the pauper gained a settlement by the right to agist the two cows.

been so, there are not wanting cases to show that it is not necessary that a rent should be paid in money, or indeed that there should be any rent at all, in order to constitute him the occupier of a tenement, but a service is quite sufficient. The case of the herdsman (*Rex v. Melkridge*) is full to that point. If that be so, what is the present case but that of a servant who stipulates for a profit out of land of more than the yearly value of 10*l.* for which he is to pay in service." Orders quashed. (See *Rex v. Nacton*, 3 B. & Ad. 543, *ante*, 601.)

Rex v. Cherry Willingham, 1 B. & C. 626; 3 D. & R. 13. Removal of Matthew Bolding from Hougham to Cherry Willingham. Order confirmed. Case:—The pauper, at May-day, 1817, contracted to become the ground-keeper of John Hill, in respect of his farm at Hougham. The master, by one entire contract, agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment of and whole profits of another cow in consideration of his lodging and maintaining in the cottage two of his (Hill's) labourers. The pauper resided under these terms in Hougham, during the year, taking the whole profits of the cows, receiving his wages, the allowance of 28*l.* and maintaining the two servants. The annual value of the lands on which the two cows were depastured exceeded 10*l.*; but the land necessary for one cow only would not be of that value, that is to say, the annual value of the agistment of two cows upon the land in question would be worth 10*l.* a year; but of one cow would not be 10*l.* a year. Abbott, C. J. delivered the judgment of the court: "We have considered this case, and are of opinion that the pauper acquired a settlement in Hougham. The tenement in question is the pasturage of two cows. It is found that the annual value of the land whereon the two were depastured exceeded 10*l.*; that the annual value of the agistment of the two would be worth 10*l.*; but of one, then not 10*l.* It was therefore contended, in support of the orders, that although the pasturage of one of the cows must be considered as a tenement upon the authority of decided cases, yet that the pasturage of the other was not a tenement, and this upon a difference in the terms of the contract. It is found that the contract was an entire contract, that the master agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment and whole profits of another cow, in consideration of the pauper's lodging and maintaining at the cottage two of the master's labourers. The question arose upon the cow thus last mentioned. Now, by this contract, the pauper does not engage to employ the milk of the latter cow in the maintenance of the labourers: he might, if milk formed a part of their diet, as it may be presumed to have done, have given the milk of the other cow, or he might have procured milk for them elsewhere, and might have sold or otherwise disposed of the milk of both the cows provided by his master. So that we cannot say the milk was given or appropriated for the maintenance of the labourers; but must say that it was given in consideration of the maintenance of the labourers. And the consideration given or paid for a tenement is wholly immaterial on a question of settlement, if the yearly value be 10*l.* Whether the consideration be paid in money, or by services rendered, or by any other matter beneficial to the party receiving, was of no importance at the time in question, which was before the 59 Geo. III. c. 50. We therefore think that the difference, as it was called in this contract, does not lead to any legal distinction which can justify us in saying, that the agistment of the latter cow was not a tenement." Both orders quashed.

Rex v. Bardwell. (See case, *ante*, 600.) Bayley, J. to his judgment there reported, added, "There is another point also which makes it extremely doubtful whether the pauper could have gained a settlement, had the going of the sheep constituted a tenement of 10*l.* annual value. The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The stat. 13 & 14 Car. II. c. 12, requires that the party should come to settle on the tenement; now that

means to reside. In all the cases determined on this part of the act, the pauper resided upon some part of that which constituted the tenement. There are cases where a party, from kindness, was allowed to reside in a house rent free, that was held to be a tenement. But here the pauper had no residence but in the character of a servant, the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house. The two cases referred to differ from this, for in each of them the pauper had property of his own in the parish, and was on that ground held to be irremovable. *Rex v. Denbigh* (*ante*, 591) also is distinguishable, for there the pauper lived in the toll-house as his own residence; and it would have been such a tenement as would confer a settlement, but for an act of parliament, which says, that no gatekeeper shall gain a settlement by renting the tolls and residing in the toll-house. For these reasons I think that the pauper did not gain a settlement in Ixworth." *Best, J.* "In *Rex v. Minster* (*ante*, 614) the principal point was given up, viz. whether the feeding of the cows constituted a tenement; but the court there thought that a house occupied by the pauper merely as a servant did not constitute a tenement. The legislature could not have intended mere residence as a servant, but that the party should gain credit and reside as a tenant. If that be so, the pauper, on this ground also, gained no settlement in Ixworth.

Rex v. Shipdham, 3 D. & R. 384; 2 M. & R. Mag. Ca. 89. Order of removal of John Hall, &c. from Shipdham to Thursford quashed. Case:—In March, 1818, Sir Charles Chadd, leaving his mansion-house and estate at Thursford, agreed with the pauper to take care of his garden; and for his so doing the pauper was allowed to take the profits of part of the garden, and to live in a cottage contiguous, belonging to Sir Charles, of the yearly value of 4*l.*, to which a small common right was attached. The pauper was to continue in the premises for a year before any further agreement was to take place between him and Sir Charles, unless some other person should before that time occupy the mansion, &c. in which case the gardens, &c. were to be delivered up by the pauper. The pauper continued in the occupation of the garden under the above terms for a year and a quarter. The produce of the garden was worth 70*l.* a year to the pauper, and the expense of keeping up the pleasure grounds, &c. together with the value of the pauper's labour, would amount to as much as the profits which the pauper was allowed to take." *Bayley, J.* "Where did the pauper reside? Not upon a tenement of his own. He resided in a cottage of Sir Charles Chadd's, and we were of opinion yesterday, (a) that in order to confer a settlement by renting a tenement, the party must have a residence which might be called his own home, as tenant; and that where he resides in the character of servant merely, that would not be sufficient to satisfy the words of the statute, 'coming to settle.' This pauper had the garden merely as servant." *Holroyd and Best, Js.* concurred.

Rex v. Seacroft, 2 M. & Sel. 472. Removal from Leeds to Seacroft. Order confirmed. Case:—The husband of the pauper while renting and occupying a house in Leeds of the yearly value of 6*l.* engaged himself as waiter at the hotel in Leeds, and at the same time had the tap, that is, the privilege of selling malt liquors there; and for the convenience of holding his liquors, had the use of the cellar belonging to the hotel, which had a distinct and separate entrance, and of which he kept the key. He paid in the whole for his situation as waiter, and for the tap and cellar, the yearly sum of 60*l.* The annual value of the cellar, independently of the privilege of the tap, was upwards of 6*l.* The court said, "That there did not appear to be any taking of the cellar as a tenant, but the use of it was only a privilege allowed him in respect of the principal thing, which was the hiring himself as a waiter. That before a party can be said to come to settle in a tenement there must be something like a taking of it as a tenant." Order confirmed.

A waiter at an hotel had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance, and of which he kept the key; he paid for his situation of waiter and for the tap and cellar the yearly sum of 60*l.*: Held, not such an occupation of the cellar as to confer a settlement.

(a) See *Rex v. Bardwell*, *ante*, 600, 616.

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The pauper agreed to serve as a labourer for 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding a pig; under this agreement he served, and had the exclusive occupation of the house for himself and family: Held, not a coming to settle on a tenement to confer a settlement.

Rex v. Kelstern, 5 M. & Sel. 136. The pauper, a married man, agreed to serve S. for a year as a labourer, and was to have 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field: the pauper had the exclusive occupation of the house, the house was about 100 yards from the house of S., a house was necessary for the performance of his service, and if he had not had it he would have had more wages. Lord Ellenborough, C. J. "I own I have no doubt in this case that the only occupation of this house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about 100 yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an out-house, where, being a family-man, it is more convenient that he should be out of the dwelling-house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes farther. In *Rex v. Melkridge* (*ante*, 614) the question did not turn upon whether it was an occupation by the herdsman or the commoners who employed him, for it did not appear that the commoners ever had an occupation in any way, but the herdsman had it exclusively. At present it seems to me to be incontestably plain that this was nothing more than the occupation of the master by the servant. Therefore the house cannot go to form a part of the tenement so as to make up the value of 10*l.* a year." Bayley, J. "I take the distinction as laid down in *Rex v. Minster* (*ante*, 614) to be this, that if the occupation be unconnected with the service it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement. Now from this case I collect that the occupation of the house was necessary for the performance of the service; therefore it must be taken as the occupation of the master, and not of the servant." Abbott, J. "I am glad that the court is not called on to decide that this is a coming to settle on a tenement, for it would tend to deprive labourers in husbandry of many comforts accruing from this species of agreement. If it contained a settlement farmers would be unwilling to grant those advantages, for the loss of which no probable addition of wages would afford an adequate compensation in point of comfort."

A pauper, employed as a labourer by the board of ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house as required: Held, that his last occupation of the house was not as a tenant, but as a servant, and that no settlement was thereby gained.

Rex v. Cheshunt, 1 B. & Ald. 473. A pauper employed as a labourer by the board of ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*) and upon his dismissal from his employment he gave up possession of the house as required. The board had several other houses for their labourers, which they occupied only as long as they were in the employment of the board. The court held, that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. Lord Ellenborough, C. J. "In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables, but such occupation is not within the meaning of 13 & 14 Car. II. The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the board of ordnance. All this clearly shows that he was only entitled to hold it during and for the more convenient performance of his service. If the court should hold in this and similar cases, that the legal relation of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his labourers resided, would be compelled, on any change of their service, to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears that the relation

of landlord and tenant never did subsist here, and unless that were so, this was not an occupation within 13 & 14 Car. II." *Bayley, J. "Rex v. Minister (ante, 614)* only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement; but that the occupation of one connected with the service would not. In this case the tenement is connected with the pauper's service under the board of ordnance."

Rex v. Iken, 4 Nev. & M. 117; 2 Ad. & E. 147. Appeal against an order of removal from Iken to Frostenden. Case:—In 1813, George Chambers, being at that time a married man, and settled in Frostenden, went into the service of Samuel Barnes, of Iken, as a pot maker. Barnes rented a considerable farm in the parishes of Iken and Sudbourne, including a pot-kiln and sheds in Iken. Chambers was to make and burn pots; to do which he was to have the use of the kiln, sheds, and yards. Barnes was to keep the kiln and sheds in repair; to furnish and cart off all the clay wanted, and supply horses to grind it twice, and to find red lead, with whins and coal for burning the pots. Chambers was to receive 25 per cent. on the sale of the pots, for making and burning them; Barnes was to receive 25 per cent. for the use of the kiln, sheds, and yards, and preparing and carting the clay, and also for carting out the ware when sold; another 25 per cent. for coals, whins, and red lead; and the remaining 25 per cent. was allowed to shopkeepers for selling the goods. Chambers resided in a cottage in Iken, which he rented of Barnes for three guineas a year, and worked the kiln until 1815; when Barnes, being dissatisfied with the ware made by Chambers, put an end to the foregoing agreement without notice; and the parties entered into a new one, as follows:—The average number of kilns burnt, during the year, was about twelve; and, the value of each being about 24*l.*, it was agreed that Chambers should pay Barnes 6*l.* after each burning, for the use of the kiln, sheds, and yards, and for furnishing, carting, and grinding the clay, and carting the ware out when sold. Barnes was to keep the kiln sheds in repair, as before; to provide red lead, coals, and whins for burning the pots; for which Chambers was to allow him in the settlement of accounts; and Chambers was to dig the clay, and do as he pleased with the ware. Chambers continued to reside in the cottage at the same rent, and worked the pot-kiln under this second agreement until 1828, when he died. The clay furnished by Barnes was dug and carted in the winter time, for the succeeding summer, from lands in Sudbourne occupied by him, except for one season only, when it was taken from other lands in Iken not occupied by Barnes. The cottage, with the kiln and sheds, and land on which they stood, without the clay, were worth more than 10*l.* a year; but the clay itself was worth 15*s.* a year only. The question was, whether Chambers came to settle upon a tenement within the meaning of 13 & 14 Car. 2. Lord Denman, C. J. "I think a settlement was gained in this case. It is contended that Chambers's occupation under the second agreement was merely a continuation of that under the first; that he had no independent interest, and that his occupation was merely ancillary to a service. But looking at the second agreement, I own I think he had an independent interest, and that he was not liable to be turned out at will. It is true that there are expressions in this case respecting the earlier agreement, which render it doubtful whether a settlement could have been gained by that; and we find that Barnes actually exercised the power of putting an end to it without notice, on being dissatisfied with Chambers. That fact, however, does not go far to interpret the agreement; and, at any rate, we cannot import the first agreement into the second, which appears to me to confer a substantial interest, and one under which Chambers was entitled to remain. Perhaps the best illustration of this case is that of *Rex v. Seacroft* (2 M. & Sel. 472; *ante*, 617,) where the alleged occupation was merely ancillary to the service, and consequently conferred no settlement. There, however, the party was engaged expressly as a servant. But here the party had a right to remain as long as he kept his agreement. He therefore had an interest which gave him a settlement." Taunton, J. "I am of the same opinion. If we had the first agreement only, it certainly would be a material fact, that the pauper went into Barnes's 'service;' and I should pause before saying that, in that case, I could infer a contract for a tenement. But the second agreement supersedes the first;

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The pauper went into the service of B., and, by agreement, was to have the use of a pot-kiln, &c., he paying to B. so much for every burning pot: the pauper resided in a cottage in the same parish, the kiln, &c. and the cottage were worth more than 10*l.* a year: Held, an occupation of a tenement under 13 & 14 Car. 2, s. 1, and a settlement thereby gained.

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and whatever my opinion on the first might be, under the second there was clearly a taking. The pauper had the property in the pots manufactured, the landlord finding the clay, red lead, coals, and whins necessary for the manufacture, and Chambers paying 6*l.* after each burning. Then it is found, as a fact, that the cottage, with the kiln, sheds, and land, is worth more than 10*l.* a year. Here the principal object of the contract clearly was, that the pauper should have the use of the kiln, sheds, and yard; and he could not have the use without the occupation. At the same time, if the occupation were merely ancillary to a service, it would not confer a settlement. But here I apprehend that there is no service. Chambers could not be called a servant at all under the second agreement. The use of the building and yards was in the pauper, and the property in the pots, when manufactured, was in the pauper. I agree in the decisions of *Rex v. Ches-hunt* (1 B. & Ald. 473; ante, 618), *Rex v. Langrville* (10 B. & Cr. 899; ante, 603), *Rex v. Bowness* (4 M. & S. 210; ante, 614), and *Rex v. Seacroft* (2 M. & S. 472; ante, 617). *Rex v. Hammersmith* (Note to *Rex v. Dodderhill*, 8 T. R. 450; ante, 604), is the strongest case; and it is somewhat difficult to distinguish it from the others: but I observe that counsel there gave up the settlement, and the reasons for the judgment are not stated: the only ground on which the decision, if right (and I do not say it was not), can be justified, is, to suppose that the court considered the grazing of the horse in the meadow, and the using of the buildings, to be ancillary to the principal contract. But that is a different case from this. *Rex v. Seacroft* is also distinguishable. There the pauper went into service expressly as a waiter: it never was contended that he was a tenant: it was a mere contract of service: he was to have the use of the tap and cellar, which is a profitable privilege often enjoyed by the principal waiter at large inns; it was a privilege, therefore, attached to him in reference to the principal thing; that is, to his contract as a waiter, which is inconsistent with the character of a tenant. Here the principal object was to enable the pauper to manufacture the pots, which he could not do without the buildings and yards. It is therefore a case of use and occupation." *Patteson, J.* "I ground my opinion on my construction of the second agreement: we are not called on to construe the first. Under the second agreement the relation of master and servant did not exist: such a relation is quite inconsistent with the stipulations. The pauper is to pay 6*l.* after every burning, and to burn what he pleases. Barnes, who had been dissatisfied with the old agreement, exercises under the new one no superintendence as master, or even as partner. The 6*l.* is evidently paid by way of rent. As to the cases cited, none of them create any difficulty, except *Rex v. Hammersmith*. That case is certainly very loosely reported; and I cannot understand the ground of the decision. If the only debated point there related to the grazing in the meadows, and to the use of the buildings, I can understand it; for it may be that the court held that there was merely a license, or, at any rate, not the relation of landlord and tenant. But as to the stipulation respecting the mill, and the taking back of the utensils at a valuation, that part of the case I cannot explain: there must have been something not reported. Perhaps in the present case the sessions ought to have found the fact of relation of landlord and tenant; but it is clear that relation existed." *Williams, J.* "I am of the same opinion, and that upon the second agreement. Mr. *Follett* makes use of the first part of the case to explain the second; and if that could be done, there might be some foundation for his argument. He has also noticed the difference of language in the case, in speaking of the cottage and of the other buildings; but that I think arises merely from the sessions having doubted whether the circumstances as to the latter took away the quality which creates an occupation. I think that, under the second agreement, there was an occupation. The case has been argued as if this occupation might be referable to something else, like the situation, for instance, of a waiter or a butler, or, which would be stronger still, that of a porter of a lodge, who would occupy exclusively. But as to that point, I agree with the rest of the court, that the service there explains away the occupation. Here it is not so." Order confirmed.

Rex v. Croft, M., 60 Geo. III., 3 B. & Ald. 171. Removal from Croft to Stoney Stanton, both in Leicestershire. The sessions on appeal discharged the order, and stated the following case:—The pauper was born in appellants' parish, but was afterwards bound apprentice to and served Edward Stephens, in Croft, for several years. The respondents, in answer to this, produced a certificate from Earl Shilton, acknowledging the father of Edward Stephens, Elizabeth, his wife, and Francis, their child, to belong to that parish. The appellants then proved, that the father of Stephens, after he came to Croft, under the certificate, occupied a house and homestead in Croft, and at the same time some land in Marston, and that in one year, while he was in the occupation of the said premises, he agisted three cows for two or three months in the fields of his landlord. No positive contract for the agistment was proved. The sessions determined that the three cows were agisted for above forty days in the year, and that the average value of the agistment, reckoned by the year, added to the value of the other tenements, made the whole above 10*l.* *per annum*; but if the value of the agistment, taken only for the time the cows were on the land, were to be added, it would make the whole less than 10*l.* After argument, *Abbott*, C. J. in delivering the opinion of the court, said, "Upon the authorities there can be no doubt that the facts here stated must be deemed to be a coming to settle upon a tenement of the yearly value of 10*l.*, within the meaning of the stat. 13 & 14 Car. II. c. 12. The only doubt was, whether a difference of construction might prevail upon the certificate act, the 9 & 10 W. III. c. 11, which is expressed in somewhat more precise terms, viz. 'bona fide take a lease of a tenement of the value of 10*l.*' It is obvious, however, that in construing these words reference must be had to the former statute, to supply the word 'yearly,' which is wanting in this statute; and in like manner the words of the second branch of this clause, 'execute some annual office in such parish, being legally placed in such office,' have been construed, with reference to the stat. 3 & 4 W. & M. c. 11, s. 6, to require a service of the office for an entire year. *Rex v. Tittleworth*, (*Burr. S. C.* 238.) No case has been found in which the stat. 9 & 10 W. III. has received a different construction from the stat. 13 & 14 Car. II., as to the nature of the tenement, or of the taking thereof. On the contrary, it has been decided, that a lease at will is a lease within the certificate act, (*Stra.* 502.) And in the case of *Rex v. Shenston* (*Burr. S. C.* 474; *post*, 632), Lord Mansfield says, the two acts are to be considered together, being *in pari materia*." Order of sessions confirmed. A license for a year to use part of the machinery of a mill will not confer a settlement.

Rex v. Butley, *Burr. S. C.* 107; 2 *Bott*, 128. The pauper took a lease of a windmill in Benhall for three years, but had a surety who engaged for the payment of the rent. *Page*, J., said, "the parish officers had nothing to do with looking into the fact of giving security. It is the credit of taking a tenement of such a value, that is the point; were it otherwise, a much greater rent might be insufficient to gain a settlement, though the act requires no more than 10*l.* a year. The visible credit is the grand point."

Rex v. Hooe, 4 *East*, 362. The pauper took a house in Hooe at 11*l.* *per annum*, of Pococke, then overseer of the poor of that parish; the pauper, previous to this taking, had had his rent paid by Hooe, and after the taking was relieved by them. Previously to this taking, Porter had agreed to take part of the premises at 5*l.* *per annum*, and the pauper would not have given so much for the premises if Porter had not promised to take part of them under him. Porter guaranteed the rent to Pococke, who would not have let the premises without such guarantee. But when the agreement was made between the pauper and Pococke, the latter said expressly he made the agreement with the pauper only, and considered none but him as his tenant. There was no fraud; credit was given to the pauper for 6*l.* only, and for the residue credit was given to Porter only. Lord Ellenborough, C. J. "The stat. 13 & 14 Car. II. gives authority to two justices, on complaint within forty days after any person 'shall come to settle in any tenement,' &c. No doubt this was a coming to settle by the pauper. Then it says, 'upon any

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What deemed a "taking a lease of a tenement" within 9 & 10 Will. 3, c. 11, so as to discharge a certificate.

Parish officers have nothing to do with the fact of surety being taken for the rent.

And the question in these cases is, whether the pauper were tenant or not; and whether he acquired the interest of a tenant to that value.

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Credit need not be given to the pauper for the rent, if he be the tenant for the premises.

tenement; that includes the character of tenant, in which he comes to settle, which is the principal question here: and then the value, which must be 10*l.* a year to confer a settlement: and here the value of the entire premises was 10*l.* a year. Now as to the principal question, the pauper was to all intents and purposes tenant of the legal estates for the whole; fraud being excluded by the sessions. He was subject to all the liabilities of a tenant. It is stated that the pauper took the premises of Pococke at the rent of 11*l.*, and Pococke said that he demised to the pauper only. Then shall it be said that he had not the whole interest in him, because a surety was required for the rent? Having such a surety has been holden to make no difference. But it is said that the only inducement to the landlord to let to the pauper was the security, and therefore credit was not given to him. But so a man's inducement to take a bill may be the security of the drawer as well as acceptor; still he gives the latter credit. Then where there is a tenement of sufficient value, and a tenant not removable, who is liable to all the burthens of a tenant, and all the liabilities of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by forty days' residence on such a tenement." And *Grose, J.* said, "that it was not necessary the pauper should have paid the rent; it was sufficient he had credit to be trusted with a tenement of the annual value of 10*l.* It was not necessary for the tenant to have paid the whole rent; for though the rent were paid by others, yet as he had credit for the whole premises, it was sufficient; and he showed that he deserved that credit in the present instance, for he actually paid the whole rent." (*So the case stated.*) *Per Lawrence, J.* "It is argued, that unless credit were given to the pauper for 10*l.* a year in value of the rent, no settlement can be gained by him. But I do not know that that is a necessary conclusion. The 13 & 14 Car. II. c. 12, gives power to the justices to remove, on complaint within forty days, any person 'who shall come to settle in any tenement under the value of 10*l.*' &c., unless certain things are done which are required by that statute; but they have no power given to them to remove any person coming to settle in a tenement of that value or upwards. Such a person is not submitted to their jurisdiction at all. The question, therefore, is not a question concerning the credit of the party, but whether in point of fact he came to settle; *i. e.* acquired the interest of a tenant in a tenement of that value; for if he did, the justices had no power to remove him. Now, upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement, as the tenant thereof, which prevented him from being an object of removal." *Le Blanc, J.* "I think sufficient appears to enable us to see what facts and conclusions the sessions meant to submit to our review. And we must, I think, take them to have found, that though the pauper had taken the whole tenement of Pococke, yet that from the guarantee of Porter, who was himself to occupy part under the pauper for 5*l.* a year, the sessions thought that this in effect was an agreement to relieve the pauper from the responsibility of so much of the rent, leaving him only liable for 6*l.* a year, and that that would not confer a settlement on him, but is founded on a mistake in law; for it is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises."

A tenancy of eight pounds eight shillings *per annum* in the parish of A., cannot be coupled with a freehold let for fifty shillings *per annum* in the parish of B., so as to give a settlement in A.

Rex v. South Bemfleet, 1 M. & Sel. 154. Removal from Fobbing to South Bemfleet. Order confirmed. Case:—The pauper, Henry Brewitt, went to Fobbing, where he rented and lived forty days in a house of the value of eight guineas *per annum*, having previously to, and at the time of his quitting South Bemfleet, and during his residence in Fobbing, and when the order of removal was made, a freehold estate in South Bemfleet, which he had let at the rent of 2*l.* 10*s.* *per annum*. *Lord Ellenborough, C. J.* "This can never be called an occupation of a freehold interest, where there was no occupation in fact, it being leased out to another, and without some occupation the pauper cannot gain a settlement. The cases have already gone far enough: the mode of reasoning adopted to-day would go to show that having any interest whatsoever was an occupation, and if pushed a little farther would take in property in the funds." *Le Blanc, J.* "The words of the

statute are, 'come to settle in any tenement;' which have been sufficiently departed from already, when it was decided that if a person take a tenement of the value of 10*l.* a year, and underlet a part, he will thereby gain a settlement; but the ground of that decision was, that he had credit to be trusted with 10*l.* a year. Here, however, the pauper had only credit for a less sum than 10*l.* a year, viz., eight guineas a year. But it is said he had property of his own elsewhere, of that however he was not the occupier; but an ingenious argument is raised from what fell from the court in other cases, to show that the principle of those cases is applicable to this, where he never occupied to the value of 10*l.* a year, because it is said that he was not likely to be chargeable, but it is sufficient to say, that those cases are not like the present, and that there is no case which seems to have gone the length contended for." *Bayley, J.* "According to the argument, if a person having property of his own of 5*l.* a year value in Cornwall, leased it out, and came to occupy a tenement of 5*l.* a year in London, that would be coming to settle in a tenement of 10*l.* a year, and the party would gain a settlement in London. Such a construction of the act would be a violent departure from the words of it." Order of sessions confirmed.

Rex v. St. John's Glastonbury, 1 B. & Ald. 481. The pauper rented a house and potatoe garden, but not of the annual value of 10*l.* At the same time he occupied freehold land of his own which he had purchased for 10*l.* It was of the yearly value of 1*l.* 10*s.*, making in all more than 10*l.* Before the order was made he sold and gave it up. Lord *Ellenborough, C. J.* said, "The argument in this case has brought back to my mind the decision in *Rex v. Bowness* (*ante*, 614). I think that the coming to settle, in the 13 & 14 Car. II., must mean to settle as tenant; the act having said, that persons who shall come to settle on a tenement of the value of 10*l.* shall not be removable, must be construed to imply that they shall be removable if the tenement be of less value. Now it is clear that at that time a man was not removable who resided on a tenement of less value than 10*l.*, if that tenement were his own property: the legislature, therefore, could not have contemplated a residence on a man's own property, when they used the words 'coming to settle on a tenement.' What is reported to have fallen from me in *Rex v. Bowness*, was certainly not to be considered as an *obiter dictum*, but it is confirmed by the authority of Lord *Kenyon* and Mr. *J. Lawrence* in the cases cited." *Bayley, J.* "The legislature must, by the word tenement (see 13 & 14 Car. II.), have contemplated a description of property from which, if of less than 10*l.* yearly value, a party could be removed: now if the property were his own he could not at that time be removed from it, however small its value, therefore it seems to me this is not a tenement within that statute. This is strongly illustrated by 9 & 10 Will. III. c. 11. One of the means by which a certificate may be put an end to, is by taking a lease of a tenement, from which it may be fairly inferred that the legislature thought the 13 & 14 Car. II. applied to leaseholders and not to freeholders." *Abbott, J.* "was satisfied by the argument against his first opinion, that the pauper must come to settle on all as tenant." *Holroyd, J.* thought that the statute did not apply to a man's own property and said, "but my doubt arises from this; I consider that the statute meant to enact, that when a man resided forty days on property where he was entitled to reside he should gain a settlement. Now, here, the party did reside forty days, and was irremovable all that time. I am therefore rather inclined to think that in so doing he gained a settlement."

Nor in the same parish.

6. AS TO JOINT TENANTS. (a)

6. As to Joint
Tenants.

Marden v. Barham, Burr. S. C. 311; 2 Bott, 311. Two persons jointly hired a house and land at Marden for 16*l.* a year, and jointly occupied the house and tilled the land for the year and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited between *Croft* and *Gainford*, at Durham assizes,

Renting jointly a tenement, which, when divided as to value between the tenants, will not produce ten pounds a year for

(a) See division of the subject, *ante*, 580.

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each tenant, will give no settlement to either.

Where one originally takes a farm of the annual value of fifty-two pounds, and then takes a partner, the latter will also gain a settlement.

Being joint partner with a person of a farm of one hundred and seventy-six pounds a year, gains a settlement.

1733 (2 *Bott*, 130), which was a joint taking of 14*l.* a year, each paying separately, the landlord not caring to let to either singly. And the two judges (Lord C. J. *Eyre* and *Reeve*) to whom it was referred, held it no settlement, because the statute requires the person's taking a tenement of 10*l.* a year value: whereas this practice of calling in a partner in the taking would, if admitted equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families, all to be settled upon one tenement of 10*l.* a year value. On the contrary it was argued that each was legally tenant of the whole, both being liable to the landlord for the whole rent. By the court: "This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one-half, and that half doth not amount to the value of 10*l.* a year."

Little Tew v. Duns Tew, *Burr. S. C.* 398; 2 *Bott*, 168. Richard Guffkyns the pauper, together with John Goodwin his father-in-law, rented a tenement at Duns Tew at 81*l.* a year as partners, and lived there twelve years. And being about to leave Duns Tew, Goodwin alone went to Mr. Keck's agent at Little Tew and took a farm of 52*l.* a year for four years. After the said taking, and before the farm was entered upon, Guffkyns inquired of Goodwin whether he depended upon his going with him to Little Tew? To which Goodwin replied, that he did; for he could not go without him. They both removed from Duns Tew to Little Tew, with their whole joint stock to the value of more than 100*l.*; and managed the farm together for seven years, both of them residing thereon. Keck gave his receipts for the rent to Goodwin only; and once when Keck distrained for rent the distress was made upon the stock, which Keck supposed to be Goodwin's only; and Goodwin alone gave a bill of sale of the stock; and Guffkyns then stood by without interposing. At the end of seven years, just before the order of removal was made, Guffkyns went off from the farm, and Goodwin took the whole stock, allowing Guffkyns 62*l.* for his moiety thereof. It was adjudged by the justices, that this being not a joint hiring but a taking by Goodwin only, Guffkyns, the pauper, did not hereby gain a settlement. By the court: "The words of the statute are, *coming to settle in any tenement under the yearly value of 10l.* The agreement between the two farmers was, to occupy jointly with a joint stock: that the case doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legislature to a man able to stock a farm of such a value: a tenant may let the whole, or even subdivide it out to the under-tenants, who may thereby gain a settlement, if the tenement be above 10*l.* a year. And where is the difference between the original tenant's letting out part, and his taking in a partner?" And after having taken time to consider of it the resolution of the court was, that Guffkyns gained a settlement in Little Tew. For being taken in partner by Goodwin he is to be considered as having an interest in the farm, at least as tenant at will to Goodwin, of the moiety of a farm worth 52*l.* a year for the whole of it, and consequently his moiety above 10*l.* a year. A tenancy at will, even in the case of a certificate person, is sufficient to gain a settlement, as was determined in *Cranley v. St. Mary's, Guildford*" (1 *Str.* 502).

Rex v. Seamer, 6 *T. R.* 554. John Yates was removed from East Haslerton to Seamer. Order confirmed. Case:—T. Yates, brother of the pauper, took a farm of Sykes, Bart., at East Haslerton, at 176*l.* a year. John resided with him upon the farm, they having agreed to be joint partners in the stock and farm previous to Thomas's taking it, but John did not consider himself as tenant to Sykes. John advanced 120*l.* towards the stock and farm. Thomas was the only person rated in the parish rates, though John said he conceived himself answerable for the payment of his part, and to pay interest accordingly. After seven months, they parted: there was no account of receipts and disbursements. Upon parting it was agreed that John was to allow 20*l.* out of what he had advanced, and to be repaid the remainder, which took place. The court, without hearing counsel, were of opinion that this case was governed by *Duns Tew* and *Little Tew*. And Lord *Kenyon*, C. J. added, "that whether the pauper were considered as a joint-tenant with

his brother, or as under-tenant, he equally gained a settlement in East Haslerton." Both orders quashed.

Rex v. Tissington, Burr. S. C. 499; 2 Bott, 134. The pauper, Isaac Wibberly, took a farm in Kniveton of 8*l.* a year; and, at the same place, jointly with Thomas Hill, took another farm of 3*l.* 15*s.* a year, and at the taking of the said farm of 3*l.* 15*s.*, it was agreed between Wibberly and Hill, that Hill should take one half of the corn and hay of the 3*l.* 15*s.* farm: and that Wibberly, after Hill had taken and carried away his half part of the corn and hay, should have the whole farm of 3*l.* 15*s.* till Lady-day following, paying 4*s.* for Hill's share of the farm. The question was, whether this were a tenement of the yearly value of 10*l.*? It was argued that Wibberly was liable (as being joint-tenant with Hill) to pay the whole 3*l.* 15*s.*; and that he was sole tenant of that farm for the last half-year; or, even taking it at the strictest, that he was really and properly to pay 10*l.* 1*s.* 6*d.* a year; for he is to pay 8*l.* and half of 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*, and 4*s.* more for the last half year,) which is in all 10*l.* 1*s.* 6*d.* But the court unanimously held, "That this tenement, thus rented in Kniveton, was under the yearly value of 10*l.* The act fixes the value at 10*l.* And the value must be estimated by the rent, and always is taken to be according to the rent.(a) And here the rent is 8*l.* a year, and the half of 3*l.* 15*s.*; which two rents taken together do not amount to 10*l.* Indeed he was to pay Hill 4*s.* for the advantage he was to have after the crop was off: but an agreement of this sort between two joint-tenants cannot be considered as rent."

Rex v. Great Wakering, 3 Nev. & M. 47; 5 Bar. & Adol. 971. Appeal against an order of removal from Great Wakering to Great Wigborough. Case:—The respondents having proved a derivative settlement in the appellant parish, the appellants endeavoured to establish a subsequent settlement acquired by the pauper, either by renting a tenement in the respondent parish, or by paying rates in respect thereof, under the following circumstances:—By lease bearing date the 27th February, 1827, made between Catherine Summer, widow, of the one part, and Samuel Bullock, the pauper, and John Clay of the other part, Mrs. Summer, in consideration of the rents and covenants on the behalf of Bullock and Clay to be paid and performed, leased to Bullock and Clay certain freehold premises (therein particularly described), situate in the respondent parish, to hold from the 25th of March then next, for fourteen years, if Mrs. Summer should so long live, at the yearly rent of 16*l.* The lease contained a covenant by Bullock and Clay for themselves jointly and severally, and their heirs, executors, administrators, and assigns, for payment of the taxes, rates, and assessments to be charged on the premises (but there was no covenant for payment of the rent); and, previous to the 29th of September then next, to lay out 30*l.* in repairs on the premises, and to keep and leave the same in repair. It also contained a covenant by Mrs. Summer, with Bullock and Clay, to repay them the 30*l.*, in case they should be evicted by any person claiming lawful title. The lease was duly executed by all the parties. *Denman*, C. J. "It appears to me that this letting did not confer a settlement, because it was a joint letting to two, and as the rent of 16*l.* would be payable by the two lessees, each would be liable only to pay a moiety. But in order to give a settlement, the tenement of each should be of the annual value of 10*l.* In *Rex v. Hooe* (4 East, 362; ante, 621,) the demise was to one only, and his rent was guaranteed by another person, but the latter was not tenant. Whether the parol evidence be admissible or not, is immaterial; because, assuming it to be receivable, the letting was in fact to the two jointly, and the rent therefore payable by the two, and, consequently, neither rented to a sufficient amount. As to the other ground, that Clay may be considered as having let his moiety to the pauper, that is a fact not found by the sessions, and we cannot infer it." *Littledale*, J. "The demise being to two as joint tenants, each was entitled to occupy an undivided moiety in his own right. The pauper, therefore, if he occupied the whole, would occupy one half in his

6. As to Joint Tenants.

Renting one entire tenement, and jointly part of another, will, if the whole be of sufficient value, gain a settlement.

Demise of a house and lands to two jointly of the annual value of 16*l.*: Held, that neither could thereby gain a settlement, although the pauper alone was the occupier and alone rated, the other party being joined in the lease as a surety only.

(a) That is if the sessions find no other value.

6. *As to Joint Tenants.*

own right, and the other half as bailiff to Clay, and would be accountable to him for the profits. He therefore only occupied in his own right a tenement of 8*l.* a year value, which is not sufficient to give a settlement either by renting or by payment of rates." *Taunton, J.* "The rule laid down by Mr. *Nolan* (vol. 2, p. 37,) is, that where a tenement is occupied by two jointly, and is of the value of 20*l.* a year, both may gain a settlement, for the moiety occupied by each is of the value of 10*l.* per annum; but where the tenement is occupied by two jointly, and is under 20*l.* per annum, neither can acquire one: and he adds, (from the case of *Croft v. Gainford*, 2 *Bott*, pl. 194, 6th edit.) that 'if the law were otherwise, the inconveniences arising from it would be intolerable; for if forty persons, for the same purpose, were to rent a tenement of this value, each of them would be entitled to a settlement; the manifest design of the statute would be thereby eluded, and the parishes would be loaded with poor.' Here, no settlement was gained, because the rent for the whole premises was only 16*l.* per annum, and it was payable by the lessees jointly; and supposing that the parol evidence was properly received, it does not vary the case; for, although it may have been intended that Bullock should be sole tenant, and Clay surety, still the demise by the lessor was to the two jointly, and the rent therefore was payable by them. There is no ground for saying that there was a settlement by rates; for that depends on the same circumstances, precisely, as a settlement by settling on or renting land." *Patteson, J.* "This is a joint lease to the two as regards the landlord. Whether the parol evidence was admissible as between the parties to this record is immaterial. I think it was admissible as between them, though it would not be so as between the parties to the instrument. All the authorities show, that if there be a joint-tenancy, each of the parties should be interested to the amount of 10*l.* With respect to an under-letting by Clay to the pauper, there were some circumstances to warrant such an inference; but the sessions have not drawn it, and we cannot." Order of sessions quashed.

7. *Permissive Occupation is a "coming to settle."*

7. PERMISSIVE OCCUPATION IS "A COMING TO SETTLE." (a)

The words "coming to settle" in the 13 & 14 Car. II. are satisfied if the party takes up his residence in the place, although he is not responsible for the rent and taxes of the premises in which he dwells, but has a permissive occupation only.

Where a pauper's brother-in-law, without any authority from the former, and without his knowledge, hired a house at eighteen pounds a year, and allowed the pauper to remain in possession for two years and a quarter, and then, without notice, directed him to quit, which he did immediately, not having paid any rent or taxes during the time: Held, that the pauper was a tenant at will, and thereby acquired a settlement by renting a tenement with in the meaning of the 13 & 14 Car. 2, c. 12.

Rex v. Chediston, 4 B. & C. 230; 2 D. & R. Mag. Ca. 137. Thomas Squire was removed from Halesworth to Chediston. Order confirmed. Case:—The pauper occupied a farm in Chediston in 1806, assigned over his farm for the remainder of his term, together with his farming stock and crops, to his brother-in-law Page, upon trust to cultivate the farm, and at the expiration of the lease, to sell the stock and crops for the payment of the pauper's debts, and then to pay over the balance to the pauper. Page acted under this trust till Michaelmas, 1817, when the lease expired, but no final settlement of accounts took place, and nothing was paid to the pauper, his property, as stated by Page, not being sufficient to pay his debts. At Michaelmas, 1817, Page not having any authority from the pauper so to do, and without his knowledge, hired a house in Halesworth, of the value of 18*l.* a year, in which Squire and his family resided. Some of the furniture belonged to Squire, and some to Page. The house was much larger than was required by Squire, and was taken by Page because he could not procure a smaller one. Squire never paid rent for the house, nor parish rates, nor taxes. They were all paid by Page, who was assessed in the parish rates and in the tax collector's assessment for the house. The pauper and his family continued to reside in the house till Christmas, 1819, when Page, without any notice, directed the pauper and his family to quit the house at Halesworth, which he did. Page stated that he considered Squire responsible to him for the rent, but when Page hired the house he did not think he should

(a) See division of the subject, *ante*, 580, 581.

get the rent. *Bayley, J.* "It appears to me that there was a sufficient coming to settle on a tenement in Halesworth. The assignment to Page dispossessed the pauper of all right to reside on the farm, and gave Page the complete control over it. Under these circumstances P. took the house in question, not for his own purposes but as a residence for the pauper, who removed to it with his family. It is stated indeed that the house was larger than Squire wanted, and that P. put some of his own furniture into it, but S. had the exclusive occupation; and whether P. hired the house as agent for S., or whether he hired it for himself and underlet to S., still the latter was tenant; there might be a difficulty in saying that P. was agent; but then it is clear that S. was tenant at will to him; and *Rex v. Fillongley*, (*post*, 629), and *Rex v. Lakenheath* (*post*, 631), are decisive authorities that such a tenancy is sufficient to confer a settlement. In the latter of those cases *Abbott, C. J.* says 'The pauper gained a settlement because he occupied in his own right, and not as a servant.' Here S. occupied in his own right, for P. took the house expressly for him." *Holroyd, J.* "Had a burglary been committed during S.'s occupation, the house must have been in an indictment described as the dwelling-house of S.; the case contains no statement of any occupation by Page. S. might have maintained trespass; that makes him at least tenant at will to P., and then *Rex v. Fillongley* and *Rex v. Lakenheath* are in point. It is said that in the former the pauper could not have been turned out, because he had sown the land; but it appears that he had sown it with his brother's corn; it is therefore difficult to understand how that can vary his rights, and no such argument can be urged against the latter case." *Littledale, J.* concurred. Order of sessions quashed.

Rex v. Ashton-under-Lyne, 4 M. & Sel. 357. Removal from Southcoates to Ashton-under-Lyne. Order confirmed. Case:—In 1803, S. Mills, the husband of the pauper, enlisted into the king's service, and in 1809 deserted from it, leaving his wife and children in Southcoates. Afterwards the pauper took a house in Southcoates at 5*l.* a year, and resided in it with her children to the time of her removal, a period of several years. During her residence in this house she took another house from one Dean at five guineas a year rent, and put some of her husband's furniture into it, intending at the time to remove from the house where she was then living into Dean's house; but she never did remove, but underlet it to another person. Dean considered the pauper as liable for the rent, and at the expiration of the first quarter called upon her for payment of it. During this quarter her husband came to see her, and remained for seven weeks of it concealed in the house in which she resided. Both that house and the house taken of Dean were taken without the privity of her husband, but the fact of their having been taken was communicated to him at the time of this visit. Dean never considered her husband as his tenant, nor ever knew of his being in existence. The question was whether the pauper's husband acquired a settlement in Southcoates. After hearing *Scarlett* against the order, Lord *Ellenborough, C. J.* said "This is a new head of settlement *latitando*; but it appears to me that it would be a gross perversion of terms to say that this pauper came to settle in a house, when he only came to it for the purpose of concealing himself from the search of those who had a right to his service, and when the most that can be said of his residence is that the wife does not turn him out. But the wife was the ostensible party; she it is that makes the contract in her own name, and nothing is ever done on the husband's part to ratify it in any way. His coming into the parish therefore was nothing better than the mere intrusion of a fugitive who is lurking in hiding places, and was not in any sense a coming to settle, that is, not a coming into the parish *animo residendi*." *Le Blanc, J.* and *Bayley, J.* were of the same opinion. Order confirmed.

Rex v. St. Michael in Coventry, 15 East, 567. Stephen Merrall removed from St. Margaret in Leicester to St. Michael in Coventry. Order confirmed. Case:—Stephen Merrall, in October, 1810, took a house in St. Margaret, Leicester, of the annual rent of 4*l.* 15*s.*, which he gave up on the 5th of July, 1811. On the 8th of April, 1811, he agreed with a Mr. Bradley for a house and shop in St. Margaret, at the annual rent of 13*l.* 13*s.*, which

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A soldier who deserted and returns and remains concealed for seven weeks in a tenement taken by his wife, does not "come to settle."

If the pauper be removed after the contract for, and before the actual tenancy commences, he gains no settlement.

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house was then in the tenure of Goff, who was to be tenant thereof to Bradley till the 5th of July following. The pauper was to commence tenant from the 5th of July, and to pay rent from that time. On the 15th of June, by permission of Goff, the then tenant, the pauper put part of a stocking-frame into the said shop, and received the key of the shop from Goff for the purpose. On the 17th of June he put in the remainder of the frame, and on the 22d and 24th of the same month he put other frames in. On the 25th of June the pauper's daughter went to the shop to work, on which day the pauper found the key of the house in the outward door, and took it and put some goods therein by permission of Goff and Bradley, and he continued to take articles of furniture to the house as he went backwards and forwards to work at the shop from the 25th of June until the 3d of July, when he and all his family went to sleep there, having slept until that day in the first-mentioned house. Goff paid the rent for Bradley's house and shop up to the 5th of July, but left the house on the 25th of June, and went into an adjoining one. From the 28th of June until the removal took place, the pauper continued to receive relief from St. Margaret's parish, his wife being ill, on which account he had applied for and received relief from the same parish some days before. The pauper was neither tenant of nor occupied Mr. Bradley's house for forty days, nor did he ever pay any rent for the same. Lord *Ellenborough*, C. J. "It is assuming more than the facts of the case warrant, to say that the landlord consented to the pauper's occupation as tenant on the 25th of June. The landlord could neither put him in nor turn him out, for another person was the occupier and tenant of the premises. Then the tenant's leaving the key in the door only showed his consent to the pauper's putting his goods into the house, and the question is, whether a mere liberty of that sort is an occupation. In *Rex v. Aldborough* (post, 629,) there was a tenancy created in express terms; but here the pauper stood in no relation of tenancy to the premises at the time. He never got into the period of his tenancy, but while he was in the house, upon an expectation only of becoming tenant, he was removed." *Grose*, J. "The pauper's occupation as a tenant is expressly negatived by the case." *Le Blanc*, J. "I do not see how the objection can be got over, that at the time of his removal the pauper's interest had not commenced." Orders confirmed.

An express contract is not necessary; it is sufficient if residence be with the permission of the landlord.

Rex v. Netherseal, 4 T. R. 258. Thomas Taylor removed from Finderne to Netherseal. Order confirmed. Case:—The pauper married the daughter of J. Shipman, of Finderne, who rented and lived upon a tenement there of the yearly value of 11*l*. The pauper and his wife continued to live in the family of Shipman until his death, which happened about two years after the pauper's marriage. Shipman made a will, and after bequeathing to his son and an unmarried daughter 5*s*. each, gave the pauper's wife all the rest of his property and stock upon his tenement of the value of upwards of 40*l*., and appointed her executrix of his will. The pauper possessed himself of this property, and paid the above legacies about a year after Shipman's death. The pauper's children got the will out of a box and tore it to pieces. The pauper never proved the will on account of the expense, but continued with his wife, the executrix, to occupy the tenement in Finderne from the decease of Shipman on the 9th of November, 1774, until the Lady-day following, and paid the rent for the same. Lord *Kenyon*, C. J. thought "If the question had depended on the title the pauper claimed under the will, it would not have been sufficient to give a settlement. But it being stated that the pauper resided for more than forty days on a tenement of more than the yearly value of 10*l*., for which he paid rent, he had no doubt; although it was said that he might have been turned out of possession by some other person having a superior right; but it was not suggested who had any better title, and the landlord who received the rent could not turn him out." *Ashurst*, J. "In order to acquire a settlement by taking a tenement of 10*l*. a year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord; for in such a case the law implies a contract." *Buller*, J. "Supposing there were

no will in this case, the only persons entitled to the property of the pauper's wife's father were the pauper's wife and her brother and sister, and if it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to show that all the parties interested consented to the pauper's continuing in possession of these premises, for the other son and daughter received 5s. each in lieu of all their right and claim to their father's property, therefore all the parties interested agreed to this occupation by the pauper, and consequently there is no pretence to say that this was a holding by wrong." *Grose, J.* of the same opinion. Both orders quashed.

Rex v. Aldborough, 1 East, 597. The pauper, by an agreement with Slap, the tenant of a cottage, occupied it, and Slap left it. He brought part of his furniture, and occasionally resided there till he was removed. The pauper agreed to pay the same rent as Slap. Slap had no authority to let the cottage, nor did the landlord know it. The court thought the case too clear for argument, and that the pauper gained a settlement. And Lord *Kenyon* said that "Nothing appears of the former tenant's term having expired, and the law gave him authority to assign his interest, and the pauper did occupy above 10*l.* a year."

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If the party be let into possession by prior tenant, it will suffice.

Rex v. Fillongley, 1 T. R. 458. Mary Watson removed from Bedworth to Fillongley. Order confirmed. Case:—John Watson, late husband of the pauper, rented a farm of 40*l.* a year at Fillongley, and being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep, with which he came to Bedworth about Lady-day, 1783, where he took a house and land of 8*l.* a year rent, and resided thereon about three years; during which time the rent was paid, the first half-year by himself, the second half-year by the parish of Fillongley, the third half-year by himself, and the fourth by distress. About the said Lady-day, Thomas Watson, in a conversation with his brother John concerning his poverty, said "I am sorry for your family, and therefore I will give you a close in Astley (an adjoining parish) containing about four acres, to enjoy as long as I please, and to take it again when I please, and you shall pay nothing for it." John enjoyed the close, which was worth 2*l.* 10s. a year, for three years, during which time his brother paid the land-tax and poor-rates for the same; all the tillage was done by the servants and horses of Thomas, and they also got in the harvest; one year the close was sown with John's wheat, procured by the gleanings of his family; and in the last year the same was sown with Thomas's corn, at whose expense the crops of the corn were carried to John's house. The cattle of Thomas were never put into the close, except for tilling the land; but the cattle of John were upon the close during the time he so enjoyed it. *Ashhurst, J.* "In all cases upon settlement law, it is the safest way to adhere to the words of the act; now taking it upon the words, nothing can be more clear; they are 'that it shall and may be lawful, upon complaint made by the churchwardens, &c. within forty days after any person or persons coming to settle as aforesaid in any tenement under the yearly value of 10*l.* for any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove, &c.'" The act does not say any thing about *ability*, that is not the *criterion*. And if the party come to reside upon a tenement of 10*l.* a year, he cannot be removed, and then he gains a settlement by forty days' residence. But if *ability*, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*, yet if a man have sufficient credit and confidence reposed in him by another as to be trusted with a tenement of 10*l.* a year value, even out of charity, it is sufficient to answer the intent of the statute, because such a one is not likely to become chargeable. Therefore, neither upon the words nor the meaning of the act, was this man removable, and so he gained a settlement." *Buller, J.* "It is admitted that this is the first case which has come directly before the court for a construction on this part of the statute. Now the words of the act cannot admit of a doubt; they only speak of persons coming to settle in a tenement of 10*l.* a year, who cannot be removed. As to the question of *ability*, it seems to me that this idea

Living upon a tenement of the yearly value of 10*l.* although a part thereof is given out of charity, is sufficient.

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is founded chiefly on the words of *South Sydenham v. Lamerton*, (*post*, 636), but the words, if attentively considered, will not warrant the construction put upon them; for the credit he has is only for the rent he has to pay, but that is only as between him and the landlord—the credit is given by the landlord. Lord C. J. *Parker* first says, ‘If a man hires a house at a small rent, and pays a fine, yet if the house is worth 10*l.* per annum it makes a settlement; for the settlement depends upon the value of the tenement, not on the *rent*.’ Then, indeed, he uses these words, ‘The reason of this statute is this, that a man who is entrusted with a tenement worth 10*l.* a year, is of such credit, and must have such a stock as makes him not likely to become chargeable to the parish.’ *Eyre*, J. took it to be within the letter and intent of the law, ‘that a man who is capable of renting a tenement of 10*l.* a year should be settled in that parish.’ It is clear that they applied this reasoning to the persons mentioned in the former part of the act, to show that that case did not come within the description: and this is put out of doubt by what *Pratt*, J. says, ‘The mischief recited by the statute, and intended to be prevented, is *vagrancy of poor persons* who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, (*viz.*) *such persons as are not capable of hiring a tenement of 10*l.* a year*.’ Now it is material to consider what was the case on which the court were then speaking; they were speaking of a case where the taking was of *more* than 10*l.* per annum; therefore, these expressions only relate to cases of above 10*l.* per annum, and are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10*l.* per annum. This is more decisive on account of what is said in the conclusion of the case, where, describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt*, J. says, ‘such persons as are not capable of hiring a tenement of 10*l.* a year.’ There are no such words in the act, but if we have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthensome to the parish; these, therefore, are the persons of whom the statute speaks as likely to become chargeable, and therefore the expressions in that case are only to be considered as *particular instances of persons* who, from their situation in life, *were not likely to fall* within the description of persons in the preamble of the act. But one who is settled on a tenement of 10*l.* a year is not within the act. It has been contended that the pauper never had the tenement; but it is impossible for us to say so after the justices have stated that he had it under an agreement, which made him a tenant at will; for what is to become of the estate after he had sown it with corn? Its being gained by gleaning is not material, for supposing he had stolen it, it would have been just the same, he would have been entitled to the growing crop; he was then in possession of a tenement of 10*l.* a year, and could not have been turned out by his brother; therefore this is a sufficient taking of a tenement within the statute.” Order of sessions quashed.

A person renting a tenement in one parish and residing rent free in a tenement in another gains a settlement where he resides.

Rex v. Fritwell, 7 T. R. 197. Robert Hearne removed from Stoke Lyne to Fritwell. Order confirmed. Case:—Thomas Hearne, the pauper’s father, about twenty-two years since, rented two farms in Stoke Lyne, one at 35*l.* and the other at 10*l.* a year; during the last four months that he occupied the above farms he dwelt in Fritwell, in part of a house belonging to a relation, who permitted him to live in it rent free; the house consisted of two separate tenements, one of which the pauper occupied, together with a barn, &c. He kept a team there, and drew his corn from his farm at Stoke Lyne to Fritwell. In this separate tenement he continued nearly two years, but never occupied any land in Fritwell. The separate tenement and use of the barn, &c. were of the yearly value of about 35*s.* He never paid any rent in respect thereof, but his relation had all the dung and manure made by the pauper’s cattle, and spread it upon his own lands in an adjoining parish. Lord *Kenyon*, C. J. “It is now too late to inquire into the propriety of all the decisions that have been made on the settlement laws since the passing of 13 & 14 Car. II.; for even though it should appear on such inquiry (which I do not suggest is the case), that the words of that statute have been in

some instances strained, yet as there is a series of decided cases on the subject, we ought not now to depart from them; if when the question first arose it had been holden, that the party must have one single tenement in the parish of 10*l.* a year, perhaps such construction of the act would have fallen in with the general opinion of mankind: however, it was not long ago decided that it need not be one undivided tenement held under one landlord, nor all lying in one parish, for that distinct tenements, held under different landlords, and lying in different parishes, may be joined together; and provided they all together amount to the annual value of 10*l.* they will confer a settlement on the party, and that being once decided I think it puts an end to this question. Here the pauper's father, who rented two tenements in Stoke Lyne, went to Fritwell, where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not as has been argued out of charity. This is not like one of the cases cited, where the pauper was taken into the house of his son-in-law as a lodger, for here were two separate tenements, the whole of one of which he occupied, and I am not prepared to say that his relation could have turned him out of possession on a day's notice, and though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent, there was a *quid pro quo*; the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As therefore he was in the occupation of more than 10*l.* a year in the whole, and some part of it lay in Fritwell, I am of opinion that this case was properly decided." *Ashhurst*, J. thought that it might be fairly collected that the parties stood in the relation of landlord and tenant. *Lawrence*, J. thought the manure was given as compensation for the use of the tenement, and the landlord might recover for use and occupation. Both orders confirmed.

Rex v. Lakenheath, 1 B. & C. 531; 2 D. & R. 816. H. Bailey was removed from Chippenham to Lakenheath. Order confirmed. Case:—The pauper had resided the last seven years in Chippenham under the following circumstances: Earl of Orford, by his will, dated the 2d of March, 1726, charged his manor of and lands in Chippenham with the payment of a rent-charge of 20*l.* per annum, to be paid to the trustees upon trust, to be by them paid yearly unto a person, to be nominated by the person entitled to the manor of Chippenham, to officiate as a schoolmaster in the parish of Chippenham, for the teaching of the children of the parish, for no other reward than the 20*l.* a year, which was to be paid to the schoolmaster, without any deduction for taxes or otherwise, with a proviso that the schoolmasters should be removable and others nominated at the will of the person entitled to the manor. Upon the death of a former schoolmaster, about seven years ago, the pauper was appointed to the office. He resided at Chippenham during the seven years, and until the present order (rent free) in the house wherein his predecessors, the schoolmasters, had resided before him, and he received out of the rents of the manor and estates the annual sum of 20*l.* The house and the garden attached to it were of the value of 10*l.* per annum, part of which he underlet during the seven years to the parish at the annual rent of 2*l.* 2*s.* *Scarlett* and *Nolan* cited *Rex v. Cheshunt* (*ante*, 618), in support of the order; and *Dover* relied on *Rex v. Fillongley* (*ante*, 629), as an authority against the order. *Abbott*, C. J. "This case must be governed by the decision in *Rex v. Fillongley* (1 T. R. 458). There the pauper rented a house of the value of 8*l.* per annum, and resided in it three years. With respect to that house there was no question; but about the same time that he took that house his brother gave him a close in an adjoining parish, containing about four acres, saying, 'I'll give you a close to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it.' The court held, that the occupation of the latter close was a coming to settle upon a tenement within the statute, and the two tenements being of the value of 10*l.* per annum, that he gained a settlement. *Ashhurst*, J. says, 'If the party comes to reside upon a tenement of 10*l.* a year, he cannot be removed, and then he gains a settlement by forty days' residence.' And *Buller*, J. considered that

7. *Permissive Occupation.*

The master of a charity school, who was removable from his office at pleasure, resided for seven years, rent free, in a house of the annual value of ten pounds; part of the house he underlet to the parish at an annual rent: Held, that this was a coming to settle upon a tenement of the value of ten pounds per annum within the meaning of the 13 & 14 Car. II. and that the pauper thereby gained a settlement.

7. *Permissive Occupation.*

the pauper was a tenant at will. This is not like *Rex v. Cheshunt*, where the pauper occupied as a servant. In such a case the occupation is that of a master. Here it is found as a fact that the pauper occupied a house and tenement of the value of 10*l.* per annum, and it is clear that he occupied in his own right, for he actually underlet part to the parish. I am, therefore, of opinion that the pauper gained a settlement in Chippenham." *Bayley, J.* "The occupation of a tenement of the value of 10*l.* per annum for forty days, although no rent be actually paid, is a coming to settle upon a tenement within the statute so as to make the party irremovable. Here, indeed, the pauper might be considered to have given his services partly in consideration of his being permitted to reside in the house, and in that case the services so rendered would be something in the nature of a rent. At all events, he came to occupy as tenant at will, with a view to permanent residence; and that is a coming to settle upon a tenement within the meaning of the statute." *Holroyd, J.* "I think that the schoolmaster was tenant at will of this house. The legal possession of the house was in him, and not in the lord or receiver of the manor. In the case of a master and servant, the servant may merely have the use of the house as servant, but in that case the possession is that of the master; but here the schoolmaster actually under-let a part of the house to the parish; he, therefore, enjoyed the house as his own, and not as the servant of the lord or receiver of the manor. That being so, I am of opinion that he gained a settlement in Chippenham." Order of sessions quashed. (See *Rex v. St. Mary, Newington*, ante, 611; and *Rex v. South Newton*, 10 B. & C. 843.)

8. *As to the Time for which the Contract was made under 13 & 14 Car. II.*

8. AS TO THE TIME FOR WHICH THE CONTRACT WAS MADE UNDER 13 & 14 CAR. II.

The above statute 13 & 14 Car. II. did not require that the tenement should be taken for any length of time. The holding for a year was first made an essential part of the contract by the 59 Geo. III. In cases arising under the former act, though the value is to be estimated by the year, yet the taking may be for less than a year, or for no definite period.

Taking a tenement for eight months will gain a settlement, there being also a forty days' residence.

Rex v. Shenstone, Burr. S. C. 474; 2 Bott, 141. A person took a house of 30*s.* a year in Gratwich, and land in King's Bromley for the growing of potatoes, from Candlemas to Michaelmas, being eight months, for 11*l.*, and lodged the last forty days before Michaelmas in King's Bromley. He took them *bonâ fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged a settlement in King's Bromley.

Same point.

Staunton-under-Bardon v. Ulescroft, Burr. S. C. 558; 2 Bott, 142. The pauper took a tenement from 1st June till Lady-day following, for twenty-six guineas, which he occupied accordingly, and paid the rent. The question was whether by continuing upon this tenement for forty days unremovable, he thereby gained a settlement? And by the court, "Clearly he did."

So by taking for five months.

St. Matthew's, Bethnal Green, v. St. Botolph's, Aldgate, Burr. S. C. 574; 2 Bott, 135. John Fell, the husband of the pauper, hired a house for five months, for which he agreed to pay 4*l.* He came and resided with his family there during the five months. And the house at the time of hiring and entering upon the same, was worth, to be let, 10*l.* by the year. It was argued that this could not gain a settlement. The criterion, which is the ability of a person to hire a tenement of 10*l.* a year value, fails in this case; for it doth not appear that this man had such a degree of credit as the statute requires. Besides, that the proportion of 4*l.* for five months falls short of 10*l.* a year by about 8*d.* a month. But by Lord Mansfield, C. J. and the court: "The rent is not material, but the value. And we are concluded from treating this tenement as under 10*l.* a year, by the finding of the justices, who have stated it as a fact, that at the time when he took it it was of the value of 10*l.* a year to be let." And it was adjudged that he gained a settlement.

Removal under an order will not put an end to a

Rex v. Fillongley, 2 T. R. 709. Removal from Fillongley to Kinwalsey quashed. Case:—The pauper, on 1st January, 1786, and for some years be-

fore, rented and resided on a tenement in Fillongley of the yearly value of 10*l.* He continued there till the 29th April in the same year, when he was removed by an order of removal from F. to Kinwalsey; on the same day on which he was delivered with the order he returned back to the tenement in F., where he resided without making any new contract with his landlord for the same, and without any interruption, for about three-quarters of a year, and then was removed to Kinwalsey. The question was, whether as the pauper entered into no new contract on his return, he could be considered as "coming to settle on a tenement of 10*l.* per annum," within the statute? and, whether the former contract were done away by the order of removal? And it was urged against the order of sessions, that by *Rex v. St. Michael's, Bath*, (*post*,) there must be a privity of contract, and that mere possession will not suffice; that the pauper's return was a wrongful act, and that therefore, by *Rex v. Kenilworth*, no settlement could be gained. But it was held clearly by the court, that an order of removal could not put an end to a contract between the parties respecting the taking a tenement; that therefore the pauper could not be considered as returning in a state of vagrancy, and that the old contract remained, and therefore he gained a settlement by a residence of forty days; that in *St. Michael's, Bath* (*Cald.* 110), the pauper resided against the consent of the landlord. Order of sessions discharged. (*S. P. Rex v. Barham*, 8 B. & C. 99, and *Rex v. Willoughby*, *post*, 649).

8. *As to Time for which Contract was made.*

contract for renting: and a pauper returning, after execution of an order of removal, to his tenement under such contract gains a settlement thereby.

9. UNDER 59 GEO. III. c. 50, 6 GEO. IV. c. 57, AND 1 WILL. IV. c. 18,
THE TENEMENT MUST BE HIRED FOR A YEAR.

9. *The Tenement must be Hired for a Year.*

The above statutes first rendered it essential to acquiring this description of settlement that the tenement should be rented or hired for *one whole year*. (See *ante*, 581.)

Rex v. Herstmonceux, (*a*) 7 B. & C. 551; 1 M. & R. 426; 1 M. & R. Mag. Ca. 140. Order of removal of J. Start from All Saints, Hastings, to Herstmonceux confirmed. Case:—On the 20th December, 1827, the pauper agreed with Foster to take a house in All Saints at twenty guineas a year, the rent to be paid weekly, and either party to be at liberty to give three months' notice from any quarter day, and at the expiration thereof to determine the tenancy. The pauper continued a year in the occupation of the premises, and paid a full year's rent. *C. a. v.* Judgment delivered by Bayley, J. "The pauper in this case clearly acquired a settlement in Hastings, provided this was a renting for a whole year, within 6 Geo. IV. c. 57, which requires that the tenement be *bonâ fide* rented for the term of one year. This statute repeals 59 Geo. III. c. 50. There is nothing in the preamble of 6 Geo. IV. which shows that it was then in the contemplation of the legislature to require more than what would constitute in ordinary cases a tenancy for a year. We find no recital in the act of any inconvenience having arisen where the tenancy by the original hiring was defeasible at certain periods. There is nothing in the act to show that by the term 'one whole year,' any thing more was meant than what the law considers to be a tenancy for a year. The ques-

The taking of a tenement at twenty guineas a year, the rent to be paid weekly, but either party to be at liberty to give three months' notice from any quarter-day, is a yearly hiring within the 6 Geo. 4, c. 57.

(*a*) Though the 59 Geo. III. c. 50, expressly requires that the dwelling-house, &c. "shall be *bonâ fide* hired for the term of *one whole year*, yet a conditional hiring for that term, with liberty for either party to determine the tenancy at a shorter period, is sufficient, provided the tenancy *do in fact continue* for a whole year. The doctrine in this case is precisely within the principle laid down in *Rex v. Byker* (3 D. & R. 330; 2 B. & Cres. 120; *ante*, 374), as to conditional hirings of servants." If the bargain be originally made for an entire year, and terms are introduced

applicable to a continuance of the relation of master and servant [*landlord and tenant*] during the whole year; but there is also a provision, that on a given event it shall be competent to the parties to put an end to or suspend the service [*tenancy*] for a part of the year, still a settlement is gained if the service is actually performed [*tenancy actually exists*] for a whole year, and neither party avails himself of the condition. A conditional hiring [*renting*] is for this purpose the same as an absolute hiring [*renting*], unless the condition is acted upon.

9. *The Tenement must be Hired for a Year.*

The pauper may hire for a year of a tenant from year to year.

tion in this case will therefore be whether this was a tenancy for a year; and I cannot entertain any degree of doubt but that this is *prima facie* a yearly tenancy. The legal effect of this agreement was to create a tenancy from year to year, with a proviso for determining that tenancy at an earlier period. Upon principle, as well as upon authority, the legal estate was vested in the pauper, subject to being defeated. In the case of all defeasible estates, the legal estate passes in the first instance. A lease for twenty-one years is frequently made determinable at the expiration of seven or fourteen years; yet it is not the less a lease for twenty-one years in law, though it may be defeated by matter *ex post facto*. (a) So where the lease contains a proviso for cesser of the term upon non-payment of rent or non-performance of covenants. In *Co. Lit.* 42 a, (b) several cases are put of defeasible life estates. Lord Coke there says, "If a man grant an estate to a woman, *dum sola fuerit*, or *durante viduitate*, or *quamdiu se bene gesserit*, or to a man and a woman during coverture, or as long as the grantee dwell in such a house, or so long as he pay 40*l.*, &c. or until the grantee be promoted to a benefice, or for any like uncertain time; which time, as Bracton saith, is *tempus indeterminatum*;—in all these cases, if it be of lands or tenements, the lessee hath in judgment of law an estate for life determinable if livery be made; and if it be of rents, advowsons, or any other thing that lies in grant, he hath a like estate for life by the delivery of the deed; and in court or pleading he shall allege the lease, and conclude that by force thereof he was seised generally for term of his life." (c) Order of sessions quashed. (d)

Rex v. Wainfleet, All Saints, 8 B. & C. 227; 2 M. & R. 223; 1 M. & R. Mag. Ca. 400. Order of removal of B. Markwell from Wainfleet to Horncastle quashed. Case:—The pauper previously to Lady-day, 1822, hired from his wife's mother seven acres of land in Horncastle, which she then rented, at the yearly sum of 8*l.* 1*s.* 6*d.* and for which the pauper agreed to pay her the same rent and 3*s.* per week in addition; his tenancy to commence from the ensuing Lady-day. No time was specified for which the pauper was to take the land, but he occupied it from Lady-day, 1822, for three years, and paid the several rents as they became due; and he resided and slept in a house in Horncastle for upwards of forty days and nights in the year immediately subsequent to Lady-day, 1822. Bayley, J. "The case states that the pauper hired of his wife's mother seven acres of land, which she then rented at a yearly rent, and that he agreed to pay her that yearly rent, and also a weekly rent of 3*s.* *Prima facie* a general hiring must be presumed to be a yearly hiring (*Doe v. Browne*, 8 East, 165; *Doe v. Watts*, 7 T. R. 83), and that presumption is the stronger where the subject-matter of hiring

(a) So *e converso* in *Birch v. Wright*, 1 T. R. 380, Mr. J. Buller says, "If a tenant from year to year holds for four or five years, either he or his landlord, at the expiration of that time, may declare on the demise as having been made for such a number of years. So it is expressly laid down by the court in *Legg v. Strudwick*, Salk. 414." This dictum was cited and recognized by Gaselee, J. in *Lippincott, Bart. v. Yard*, Taunton Spring Assizes, 1828. The words of Salkeld, however are "*et per curiam*, it was held first, that after the two years the lessor or lessee might determine; but if the lessee held on, he was not then tenant *at will*, but for a year certain; for this holding on must be taken to be an agreement to the original contract and execution of it; and the first contract was from year to year; 2dly, the third year is not in the nature of a dis-

ting interest, because it arises from the same executory contract, and therefore the lessor may distrain the third year for the rent of the second; and such an executory contract as this is not void by the statute against frauds, though it be for more than three years, because there is hereby no term for above two years ever subsisting at the same time; and there can be no fraud to a purchaser, for the utmost interest that can be to bind him can be only for one year."

(b) 1 Tho. Co. Litt. 621.

(c) And see *Preston on Estates*, 405.

(d) His lordship afterwards re-delivered the judgment of the court in *Rex v. Sandhurst*, which had been given at the sittings before Michaelmas term, (*ante*), confirming the opinion then pronounced by a reference to the above decision in *Rex v. Herstmonceux* (*ante*, 633.)

is land, because land varies in its value at different periods of the year. It is said that the mother's estate was determined at the end of the current year, and that she could not therefore convey to the pauper an interest for a year, commencing on a future day. But the mother was tenant from year to year; she had an interest therefore which would continue beyond the year, unless something was done to determine it, viz. unless six months' notice to quit had been given. That interest she conveyed to her son. I think therefore the land in this case was hired for a year." *Holroyd, J.* "For the reason given, I am of opinion that the land was clearly hired for a year." *Littledale, J.* concurred. (See also *Rex v. St. Martin, Leicester*, 4 Nev. & Man. 202; 1 Ad. & El. 210, S. C.)

10. The Tenement must be Rented by the Pauper.

10. THE TENEMENT MUST BE BONA FIDE RENTED BY THE PAUPER UNDER THE RECENT STATUTES.

By 59 Geo. III. c. 50, the tenement must be "*bona fide hired* by such person;" that is, the person claiming a settlement in respect thereof: the corresponding words in the 6 Geo. IV. c. 57, are "*bona fide rented* by such person;" the meaning of the legislature is the same in both forms of expression.

10. The Tenement must be bona fide Rented by the Pauper under the recent Statutes.

Rex v. Kibworth Harcourt, 1 M. & R. 691; 7 B. & C. 790. (See the case more at length, *post*, 653). In this case, the pauper took a house and garden at 10*l.* a year; and shortly after his tenancy commenced, M. W. being churchwarden at the time, called upon him, and represented that the landlord had let the premises together with other lands to himself, and that the pauper was thenceforward to pay the rent to him; but that he should make a reduction of 8*s.* a year in his rent, to which the pauper assented, and he paid M. W. at that rate the two following quarters; and upon the death of M. W. two other quarters at the same rate to his successor in the farm. It appeared that this deduction of 8*s.* a year was repaid by the parish, which the sessions held to be fraudulent. *Bayley, J.* "As to the question of fraud, the case finds that neither the landlord nor the pauper was a party to the fraud; and though the act requires that the tenement shall be '*bona fide rented*,' I think that expression can only be construed to mean that the renting shall be *bona fide* as between the landlord and tenant. Here the renting was *bona fide* as between the landlord and tenant. It seems to me therefore that all the requisites of the 6 Geo. IV. c. 57, have been complied with in this case; and that a settlement has been gained under that act."

The renting must be bona fide by the pauper, but fraud of parish will not prevent a settlement.

Rex v. Kegworth, 2 M. & R. 29; 1 M. & R. Mag. Ca. 281. Removal of John Jelly from Sutton Bonington to Kegworth, confirmed. Case:—In December, 1823, the pauper Jelly applied personally and also by Smith to Jacques, to become tenant of a house and six acres of land situate in Kegworth, and finally Jelly himself concluded the agreement for and hired the house and land of Jacques, at the rent of 26*l.* a year, for one year. He entered upon the premises, and occupied the house and land, and paid rent for the same for one year and upwards. He also purchased of and paid for the fixtures on the premises to Jacques, and paid the parish rates and taxes; and upon quitting the premises Jacques paid Jelly for the fixtures then upon the premises. Smith agreed with Jacques to be surety for the rent, but Jelly always paid it, and with his own money. *Lord Tenterden, C. J.* "I think there was a perfectly sufficient *bona fide* hiring of the premises in question by the pauper, within the meaning of the act of parliament. The case expressly finds that 'finally Jelly himself concluded the agreement for and hired the house.' What had previously passed between Smith and Jacques therefore became quite immaterial. As to Smith's becoming the pauper's surety for the payment of the rent, that cannot affect the case; for it does not appear that the pauper even knew of that arrangement between Smith and Jacques, and it is stated that the pauper paid the rent with his own money." Order confirmed.

A party by whom a tenement is hired and occupied and the rent paid for a year, gains a settlement under 59 Geo. 3. c. 50, although a third person be surety to the landlord for payment of the rent.

11. *The Value
under 13 & 14
Car. II. c. 12.*

11. THE VALUE UNDER 13 & 14 CAR. II. c. 12.

The value of the tenement, by the renting or hiring of which a settlement may be gained, has always remained the same, notwithstanding tenements which were worth only 10*l.* by the year when that minimum was fixed, must have increased in annual value down to the present time many-fold.

Before the important alterations introduced by the recent statutes on this subject, if a person came to reside upon a tenement of 10*l.* a year, and remained forty days, his settlement was complete, whether he paid his rent or not, or continued in the occupation the whole term for which he had hired the premises. The legislature, relying upon the caution and prudence of landlords not to let their tenements to persons too indigent to pay for the occupation, and the vigilance of parish officers in removing such poor persons as were *likely to become* a burden upon the parish by settling upon such tenements, gave authority to justices to remove them; but if this power was not exercised for forty days, then the settlement was accomplished.

It will appear, however, by the next (12th) subdivision, that too great facility was still left for the acquisition of this species of settlement.

What has been deemed a tenement of 10*l.* annual value, sufficient for the purposes of a settlement under this statute of 13 & 14 Car. II., will appear by the following cases. The rent may be *prima facie* the criterion of value; but whether the rent be more or less than 10*l.*, the *real value* might have been enquired into, *post*.

The rent is not material, if the tenement be of the value of ten pounds a year.

South Sydenham v. Lamerton, 1 Sess. Ca. 115; 1 Stra. 57. Case:—A person took a lease of a tenement for ninety-nine years, determinable on three lives, and paid his fine, and the rent reserved was but 7*l.*, but the real value was 13*l.* By the court: "The quantity of the rent is not material, but the value of the tenement. If there be a lease of land worth 10*l.* a year, and a fine be paid, or no rent reserved, yet if the tenement be worth 10*l.* a year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent."

If a rent of ten pounds be given in contemplation of improvements by the landlord, which are never made, and the house is thereby not worth such rent, no settlement is gained.

Rex v. Southwold, 2 Sess. Ca. 198; 2 Stra. 1127; Burr. S. C. 140; 2 Bott, 131. A person took a house at the yearly rent of 10*l.* The landlord agreed to make new buildings, which improvements were never made. The house, without the improvements, was worth only 6*l.* 10*s.* a year. By the court: "The sessions must judge upon the facts; they have stated that the agreement was for 10*l.* a year; this is evidence of the value, but the justices have a right to enquire into the real value, and they have expressly stated as a fact, that this house was only of the value of 6*l.* 10*s.* a year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore this was no settlement."

Rent evidence of value.

Rex v. Weston, 2 Sess. Ca. 141; 2 Stra. 1156; Burr. S. C. 166; 1 Bott, 132. The pauper took a farm at Kirton of 10*l.* a year, which had been let at that rent for five or six years then last past, but before that time was let at 7*l.* a year only. When he first took and entered thereon, he was not of ability to stock the same. Before his entry he was told by the former tenant that his farm was too dear. To which he answered, that he did not regard the dearness; for as it was 10*l.* a year, it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but desired the former tenant to take no notice thereof to any body. By the court: "We are not to determine the matter upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10*l.* They state that he did take a tenement of 10*l.* a year at Kirton. Indeed they add, that it had been let at 7*l.* a year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10*l.* a year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, that he did it to gain a settle-

The quantity of stock on a tenement does not alter the value.

ment. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10*l.* a year, and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. He gained a settlement at Kirton."

Rex v. Purley, 16 *East*, 126. Richard Emmons was removed from Woodley to Purley. Order confirmed. Case:—The pauper, from Michaelmas, 1808, to Michaelmas, 1809, occupied a cottage and garden in Woodley, as tenant from year to year, of the annual value of 4*l.* He also held a piece of land in Tilehurst for one year, from Michaelmas, 1808, to Michaelmas, 1809, at the rent of 6*l.* 10*s.* It had been cropped by the landlord with clover and grass-seeds previously to letting thereof to the pauper, and in consequence of its being so cropped, it was worth 6*l.* 10*s.* that year; but had it not been so cropped by the landlord, it would have been worth only 2*l.* 5*s.* per year. Lord *Ellenborough*, C. J. "He occupied a tenement, which during that year was in fact of the value of 10*l.*; how it became of that value is immaterial; it might have happened that the crop was worth more in that year." Both orders quashed.

Rex v. Ringwood, 1 *M. & Sel.* 381. Removal from Tollard Royal to Ringwood. Order confirmed. Case:—The pauper being settled in Ringwood, rented a cottage in Tollard Royal, for which he paid two guineas a year, and he had the use of a yard, for which he paid 1*l.* a year. Whilst he occupied this cottage and yard, he took nearly an acre of land in another parish, at the rent of 8*l.* from Easter to October following, for planting potatoes. The ground had been dug by the landlord for that purpose, and it would not have been let for more than half price if it had not been dug. *Grose*, J. "The only question is, whether the pauper came to settle on a tenement of the yearly value of 10*l.* He went to Tollard Royal with his family, and resided there more than forty days. As to the value of the tenement which he occupied during that time, it is expressly stated to be above 10*l.*; but it has been contended that the land which he rented from Easter to October for planting potatoes might be worth 8*l.* for that time, and yet not of that value for a year. That proposition I do not understand, and therefore cannot assent to it." *Le Blanc*, J. "The pauper rented a cottage in Tollard Royal, at two guineas a year, during which time he also rented nearly an acre of land in another parish, from Easter until October, for planting potatoes, at the rent of 8*l.*, which land had been previously dug by the landlord, and would not have been let for more than half that price if it had not been so dug. All the premises taken together at the rent for which they were let, amount to above the value of 10*l.* But the question is, whether we are to reduce that value by taking the land, which was let for 8*l.*, at the rent for which it would have been worth to be let, if it had been in a different state; or in other words, whether we are to deduct from the rent the value of the labour bestowed by the landlord on the premises before he let them. I think the court must look to what was the value of the tenement at the time the pauper came to settle upon it, without considering by what means it became of that value. I agree that the value of the tenement increased by the labour bestowed upon it after the letting cannot be taken into the account; as if the pauper had taken it at the rent of 5*l.*, and had bestowed labour upon it to the amount of 5*l.* more, that would not have made a renting of 10*l.* But where the labour has been previously bestowed, so as to make the land fairly worth the rent at the time it is taken, the court cannot separate the value of that labour from that of the land." *Bayley*, J. "This is nothing more than a party taking land in a high state of cultivation, which has rendered it of the value agreed to be given for it at the time of the taking. Nor do I think that it would have been worth less if it had been taken for a whole year. It is urged, indeed, that if the pauper had taken it for a year, he would have had to dig it himself, and then it would have been of less value to him than what was given for it for a shorter period; but it does not follow, that if he had taken it for a year he would necessarily have had to dig it.

11. *The Value.*

If land be taken ready sown for crop, its rent may be computed higher on that account.

Renting land which had been improved in value by the landlord having previously dug it for planting potatoes, and on that account let it at double the rent, was held to confer a settlement.

11. *The Value.*

Where the pauper agreed to take the land ready ploughed and manured, and when he entered upon it, it was quite prepared, it was held to be a renting of land of a yearly value, as it was increased by being ploughed and manured by the landlord, although, when the pauper took it, the ploughing and manuring was begun, but not finished.

I think therefore that this tenement, coupled with the other property, amounts to a tenement of more than 10*l.* a year." Order of sessions quashed.

Rex v. West Cramore, 2 *M. & Sel.* 132. Removal from Monckton Deverell to West Cramore. Order confirmed. Case:—The pauper rented a house at Monckton Deverell of the value of 3*l.* per annum, and occupied and resided in it for four years. During one year of his tenancy he rented of Rossiter 136 lugs of land, at Monckton Deverell, at the rate of 9*d.* per lug, amounting to the sum of 5*l.* 2*s.*, for the purpose of planting potatoes. He also, at the same time, rented of one Maish 58 lugs at Hill Deverell, an adjoining parish, at the same rate of 9*d.* per lug, amounting to 2*l.* 4*s.* 9*d.* These rentings together amounted to 10*l.* 6*s.* 9*d.* The pauper agreed to take the land of Rossiter ready ploughed and manured; and when he took it, the ploughing and manuring was begun, but not finished; but when he entered upon it it was quite prepared. At the time of planting he followed Rossiter to plough, and planted the potatoes himself, which were afterwards covered in by the plough. The agreement with Maish was similar to that with Rossiter; and when the pauper took and entered Maish's land, it was ready ploughed and manured. The potatoes were planted in the same manner as before stated. The two pieces of land together, without being ploughed and manured, were worth about 2*l.* 8*s.* per annum, but being ploughed and manured, were worth what the pauper paid for them. The pauper took the two pieces of land in the spring for hoe crop, and he planted the potatoes in May, and took the crop out in November. This case had been reserved before *Rex v. Ringwood* (*ante*, 637), was decided, and it was attempted to distinguish it from that case, because there the land had been dug by the landlord before the letting; whereas here it is found that the ploughing and manuring was not completed when the pauper took the land of Rossiter; and the words of *Le Blanc*, J., were cited, "that the value of the tenement, increased by the labour bestowed upon it after the letting, cannot be taken into the account." It was said that this was nothing more than an agreement to take the land and employ the landlord to improve its value. If, instead of the landlord, the pauper had employed labourers for that purpose, surely it would not have conferred a settlement." Lord *Ellenborough*, C. J. "The pauper agreed to take a tenement, which should be of a certain value; and at the time when he entered on it it was of that value, for the ploughing and manuring were then finished." *Le Blanc*, J. "The distinction endeavoured to be made does not vary the case; and it does not appear that any precise sum was agreed to be paid for the labour. The observation alluded to from *Rex v. Ringwood* must be taken with reference to the case then before the court, and to the context where it is found, rather than as a general observation, or applicable to a case of this kind." Order of sessions quashed.

An increased value arising from manure, agreed for at the time, but put in after the holding commences, may be included.

Rex v. Poulton with Fearnhead, 6 *M. & Sel.* 252. Order of removal of Luke Whittle from Warrington to Poulton with Fearnhead confirmed. Case:—The pauper's father rented a cottage in Poulton of the annual value and rent of 6*l.* 10*s.*, and held at the same time land of the annual value of 7*s.* 6*d.*; he also took of Kay twenty-seven perches of land for growing potatoes, at 2*s.* 6*d.* per perch, in the spring of 1813, during the time of his holding the cottage and the piece of land. Kay agreed to furnish pauper's father with manure sufficient for the culture of potatoes, and that he should get and set the potatoes. After the holding commenced, the manure was brought by Kay, and put into the land by the pauper's father. The value of the land, upon the ordinary terms of husbandry, did not exceed 4*l.* per acre; but upon the terms above specified, of the value of 2*s.* 6*d.* per perch, amounted to 3*l.* 7*s.* 6*d.*, a sum sufficient, with the other tenements, for the purposes of a settlement. The pauper's father held all the tenements for above forty days after the manure was put into the land. It was urged that if, in the interval between the commencement of this holding and bringing in the manure, the pauper had become chargeable, the improved value could not have been considered. Lord *Ellenborough*, C. J. "The difficulties that have been raised are occasioned by the decisions which I am almost inclined to wish had never been made, that a tenement of combined value is sufficient

to constitute a settlement. However, taking the case as it stands upon the subsisting authorities, and keeping in sight the words of the act, which have been strongly and properly pressed on our consideration, I ask myself, is this a coming to settle on a tenement of the yearly value of 10*l.*? The answer depends on the value to be attributed to the twenty-seven perches; now the party who comes to settle contemplates the taking of a tenement of the value of 3*l.* 7*s.* 6*d.* He contracts for twenty-seven perches, with manure to be supplied by the landlord, and upon these terms the tenement was of that value, and if that value, the whole exceeds 10*l.* The pauper then undoubtedly comes to settle, in contemplation that he has taken and shall have the benefit of a tenement of the value of 10*l.* But the question is put, Are these perches of the value of 3*l.* 7*s.* 6*d.* at the time he comes to settle? The answer is, they are not, in point of actual permanency, on the day when the party first takes possession; but they subsist in contract of that value the instant that he enters, and actually become so pursuant to contract by the act of the landlord, and the party afterwards occupies above forty days. In this way of considering it, the tenement is of the contemplated value contracted for by the landlord, and afterwards made good by him. If we are bound down to the precise moment when the party enters, the consequence will be, that in many cases the improved value to which the landlord contracts to raise the land, can never be taken into account. In many contracts there will be stipulations of some advantage to the tenant increasing the value of the tenement, which induce him to come to settle upon it, on the faith of having this improved value made good to him; these, therefore, when made good, may fairly be referred to the value at the time of the coming to settle. I might instance stipulations on the part of the landlord to paint and paper, or to make additions to the dwelling. In cases like these the value contemplated and engaged for by the contract, as it is an improvement from which the tenant is to derive a benefit, and perhaps his motive for coming to inhabit there, may fairly be set down to the account of its value at the time he comes to settle within the meaning of the act. I do not venture into all the cases for the purpose of reconciling the various *dicta* with the statute. It would be an Herculean labour to conflict with, and I am not sure that it would be attended with success." Bayley, J. "I agree that this was a tenement sufficient to confer a settlement. It has been argued that to constitute a tenement of the yearly value of 10*l.*, so as to make the party irremovable under this act, or, in other words, to confer a settlement, the tenement must be of the requisite value when he enters upon it. But I think the argument would be more correctly stated thus—that the tenement must be of the value of 10*l.* at the time of entry, or be made of that value at the expense of the landlord; and that this is so appears from the distinction which has been taken where the improvement is to be at the expense of the tenant; in which case it has been held that it ought not to be taken into the account. This was the principle on which *Rex v. Aston* (*post*, 640), was decided. The observation of *Le Blanc, J.*, in *Rex v. Ringwood* (*ante*, 637), certainly was not made in reference to the distinction between the actual value of the land at the moment of entering, and its becoming of that value a short time afterwards by the agreement and act of the landlord. It seems to me, that whenever it is a part of the contract for the letting, that the land is to be improved at the expense of the landlord, and this is done, the tenement is to be accounted of the improved value. According to the language of some of the cases, the question is, whether the pauper was of sufficient ability to obtain credit for a tenement of the yearly value of 10*l.* And certainly it is the same thing as it regards his ability, whether the land were of that value at the moment of taking it, or whether it was stipulated to be made so, and was made so afterwards at the expense of the landlord. I think both cases are equally within the words and spirit of the act." Abbott, J. "It cannot escape our notice, that in *Rex v. Aston* the increased value arose out of several acts voluntarily performed by the tenant: here it arises, not out of any act done by the tenant, but from the act of the landlord stipulated for before entry, and done in pursuance of that contract. What is done by the landlord under such circum-

11. *The Value.*

Hiring land which is made worth 10*l.* a year by the manure, &c., which the landlord agrees to supply, though the same were not completed till after the tenant had taken possession, gains a settlement.

If the person is tenant from year to year, the value in any year is sufficient.

Evidence of value greater than the rent admissible.

Value increased during a lease for ninety-nine years, not to be regarded.

stances may I think fairly be considered as referable to the time of entry. If the court were tied down to the precise time of entering, it would lead to very subtle enquiries, which would be inconvenient, as to the instant of time when such and such repairs were made, as increase the value of the tenement to the necessary amount. To avoid such inquiries, I say, what is contracted for, before the entry, to be done by the landlord, and is afterwards done in pursuance of that contract, may be considered as done at the time of entering." *Holroyd, J.* to the same effect. Order confirmed.

Rex v. Huntsham, 2 Bar. & Adol. 503. Appeal against an order whereby H. Vinnicombe was removed from Sampford Peverell to Huntsham. Order confirmed. Case:—The pauper's birth settlement was in Huntsham. On the 1st of April, 1818, he took of one Hewett in the parish of Burlescombe, a field for potatoes, at the rent of 12*l.* Hewett agreed to supply twelve hogsheads of lime and a heap of manure, and to give the field three ploughings, to prepare it for the pauper to plant his potatoes; without which the field would have been worth less than 10*l.* a-year. About a week after the agreement, the pauper went upon the land and worked upon it, at which time the field had only been once ploughed, and none of the lime and manure had been then supplied; but Hewett performed all that he had agreed to do before the pauper planted the potatoes. The pauper, who took off his crop in the autumn, planted the potatoes himself, and paid the whole rent of 12*l.*, and the field ploughed and manured as it was by Hewett was worth that sum. The pauper went to live in Burlescombe in the year 1817, and lived there during the whole time that he occupied this field, which was about six months, and he occupied the field for more than forty days after Hewett had done his work. Lord *Tenterden, C. J.* "This case is not distinguishable from *Rex v. Poulton with Fearnhead, (ante, 638)*, and must be governed by it. The order of sessions must therefore be quashed." The rest of the court concurred. Order of sessions quashed.

Rex v. Bilsdale Kirkham, 2 Bott, 137. T. Wilson went from Bilsdale Kirkham to Bilsdale Westside, and there married Sarah, the pauper, who rented a tenement of 4*l.* a-year, and he occupied the tenement with her during his life. Evidence was offered to prove this tenement, at the time the man occupied it with his wife, was worth 15*l.* a year, though let at no more than 4*l.* But the sessions rejected this evidence, and determined on the rent actually reserved. Lord *Mansfield, C. J.* "The justices have done wrong in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10*l.* a year any year during the man's occupation of it, he will thereby gain a settlement." The case was sent back to the sessions to receive evidence of the value; which being certified as above, the court held it a settlement.

Rex v. Aston, 6 M. & Sel. 54. Order of removal of S. Jesson from Aston to Hales Owen quashed. Case:—The pauper was the widow of T. Jesson, junior, son of T. Jesson, elder, who in 1800, took land in Hales Owen for ninety-nine years, at 2*l.* 2*s.* a year, and built on it two houses, each of the value of 5*l.* 5*s.* a year. When the first was finished, he went to live in it; and before the other was built, he let it for 5*l.* 5*s.* a year; and the tenant, when it was completed, entered and occupied to the present time. Jesson, junior, lived with his father as part of his family. Lord *Ellenborough, C. J.* "I think, upon looking at the language of the statute, that we are bound, in considering the value of a tenement, to regard that as its value which it bore when the party took it, and not the increased value which it has acquired by improvements made during his occupation. If we find that this tenement was of no greater value than 2*l.* 2*s.* a year at the time when the pauper took and entered upon it, that must be deemed its value at the time he came to settle upon it. It cannot be that its value is to be perpetually fluctuating afterwards, the time pointed to being that when he comes to settle in it; at which time, if it be not of the annual value of 10*l.*, he does not acquire a settlement by it. I forbear entering more into the details of this case, because I fear that many of the doubts that have arisen

upon subjects like the present, are owing to extraneous *dicta* that have from time to time fallen from the bench. The principle however seems to be this, that where a party comes into a parish with a sufficient credit to acquire the taking of a tenement of 10*l.* a year, this shall entitle him to reside irremovably." *Bayley, J.* "The value of the tenement must be taken as of the time when the person comes to settle in it. *Rex v. Bilsdale Kirkham* (*ante*, 640) is a strong authority in point. That case was shortly this:—The pauper rented a tenement at 4*l.* a year, which during his occupation became of the value of 15*l.* a year; and it was held that evidence to prove it of the increased value ought to have been received, because being tenant *from year to year* the lease began afresh every year, and was in point of law a new demise. This was the express ground of distinction taken by Lord Mansfield in that case." *Abbott, J.* "This case is neither within the words or meaning of the act of parliament." Order of sessions confirmed.

Rex v. Whitechapel, 2 *Bott*, 132. Removal from Whitechapel to Westham quashed. Case:—The pauper's husband, P. Allam, hired a house in Whitechapel at 8*l.* 8*s.* per annum, and lived in it till his death; he also hired a room in a victualling house in W. at 3*s.* a week, to be made use of, and which was used as an office or place for the justices to meet and transact the parish and other public business. The room was furnished with chairs and tables, and the landlord was to find firing, and the landlord was to have the use of the room when Allam did not want it. Allam had the key, and might have locked it if he would, but did not. Allam alone had the concern of and paid for the room. *Buller, J.* "There is nothing found as to the value of the fire and furniture, and all we can say is, that he has rented a tenement of 10*l.* a year." Order quashed.

Rex v. Londonthorpe, 6 *T. R.* 377. John Ingram took a tenement of 6*l.* a year, and rented a piece of waste ground at the yearly rent of 10*s.* 6*d.*, on which he had the privilege of building a post windmill. This he did at the expense of 120*l.*, and worked it for three quarters of a year, but rented the ground for two years and a half, the greater part of which time the mill was standing. The mill was constructed on cross traces, laid upon brick pillars, but not attached or fixed thereto, which is the usual mode of building mills of that nature. The mill was considered as the property of the tenant. He let it to one J. for a quarter of a year at the rate of 9*l.* a year, and during that time resided in the said tenement at the rent of 6*l.* The pauper sold the mill afterwards as a chattel interest. It was never rated. *Per Lord Kenyon, C. J.* "There is no doubt but that the taking of a windmill attached to the ground of the value of 10*l.* a year, will confer a settlement; a *præcipe* will lie for such a windmill. The taking of a rabbit warren was also held to give a settlement, because it was a tenement; and so in the case of the Landsale colliery. But this windmill, as described in the case, is nothing but a chattel. And if in questions of this kind we were merely to consider the ability of the pauper, without at the same time considering whether he rented a tenement, we should abandon the statute altogether, and the decisions upon it. It might as well be said, that an iron malt mill would give a settlement. This post windmill was the sole property of the tenant himself, and it was not fixed in the ground, but detached from it. But in order to confer a settlement it should be so connected with the land as in legal contemplation to fall within the description of a tenement." *Grose, J.* "It is no more a tenement than a large coffee mill put up in a house."

Rex v. St. Dunstan in Kent, 4 *B. & C.* 686; 7 *D. & R.* 178; 3 *D. & R. Mag. Ca.* 378. Mary Wilson removed from Saint Mary, Canterbury, to St. Dunstan. Order confirmed. Case:—The pauper's husband, on the 23d of April, 1823, went to live in a house in St. Dunstan, at the yearly rent of 10*l.*; he had not occupied it for a year, but he had been rated for the house in that parish, and had paid the assessment for one quarter; one Butler had occupied the house before the pauper's husband; and at the time of the hearing of the appeal one Hunt held it, each of them paying the annual rent of 10*l.* It had for six years preceding the pauper's tenancy been let, together with the articles of furniture hereinafter mentioned, at 10*l.* per

11. The Value.

The principle is, that the person has *credit* to take a tenement of ten pounds value.

A furnished room with fire was taken, and the sessions did not find the value of the furniture distinct from that of the tenement: Held, a sufficient tenement.

If a chattel (as a post-windmill) be placed upon land by the tenant, its value cannot be added to the rent of the land.

Landlord's fixtures, which are parcel of the freehold, may be taken into the valuation of a ten pound tenement, though without them the tenement would not be of sufficient value to gain a settlement.

11. *The Value.*

annum. All houses in St. Dunstan were rated at half their actual value; and in the assessment on the pauper's husband the said house was valued at 3*l.* 10*s.*: at the time of his occupation, the house was in a very bad state of repair, and then it would have required an expenditure of 40*l.* to put it into a tenable condition: since his death and previously to Hunt's tenancy, 12*l.* had been expended upon it; there were a stove and cupboard in a room below stairs, a grate and a cupboard in the chamber, and a grate in the kitchen; the stove and grates had not originally belonged to the house, but had been put in by a tenant, and the landlord had taken them in part payment of rent about six years before; these were fixed with brickwork in the chimney places, but they might be removed without doing any injury to the chimney places; the cupboards stood on the ground, and were supported by holdfasts—and these might also be removed without doing any other injury to the walls than leaving a few marks of nails; the use of these several articles was worth about 6*d.* per week: and the tenement, including the use of them, was worth 7*l.* 10*s.*, and without them, about 6*l.* per annum. If any deduction, however small in amount, was to be made in respect of the above-mentioned articles, the tenement would not be of the annual value of 10*l.* *Abbott, C. J.* "It is found as a fact in the case, that these grates and cupboards were the property of the landlord, and affixed to the freehold, and they were taken by the pauper as the property of the landlord. I am therefore of opinion that they were a parcel of the tenement demised. Whatever might be the question, if they were merely tenant's fixtures, it is unnecessary to discuss in the present case. The sessions, in confirming the order, have stated their opinion to be, that if any deduction, however small in amount, is to be made in respect of these articles, the tenement would not be of the annual value of 10*l.*, from whence I infer, that in their judgment no deduction ought to be made." *Bayley, J.* "These articles being fixed to the freehold, and being part of the demised premises, I think they might enter into the valuation of the tenement." *Littledale, J.* "If the landlord had died, these articles would have gone to the heir, and not the executor. Then as the annual value is increased by these fixtures, I think they must be taken into account with a view to the settlement. In *Winne v. Ingleby* (5 *B. & Ald.* 625), and *Colegrave v. Dias Santos* (2 *B. & C.* 76, 3 *D. & R.* 255), articles savoring less of the realty, were held to be fixtures and parcel of the freehold." (See also *Rex v. North Bedburn, Cald.* 452.)

A contract of renting at ten pounds per annum, the landlord paying parish taxes, is a good taking of a tenement of the proper value.

Rex v. Framlingham, Burr. S. C. 748; 2 *Bott*, 201. S. Churchyard contracted with S. Hayle to hire of him a public house, &c., at the rent of 10*l.* per annum, Hayle to pay all parish rates and charges. By Lord *Mansfield, C. J.*, and the court: "This was a good taking of a lease of a tenement of the yearly value of 10*l.*, within the intention and meaning of the act of parliament. It turns upon the credit given the person; now here, credit is given to this man for 10*l.* a year. He contracted for it at that rent, and he paid that rent to his landlord for it. It was a real and *bona fide* taking a tenement of that yearly value." (See also *Rex v. Thurmaston, 1 Bar. & Adol.* 731, *post*, 644, *S. P.*)

Same point.

Rex v. St. Paul's, Deptford, 13 East, 320, Richard Rice was removed from St. Paul's, Deptford, to Greenwich. Order quashed. Case:—The pauper, at Christmas, 1807, rented a tenement of E. Burford, in Greenwich, and resided upon it more than forty days, under an agreement that he should pay 10*l.* by the year to Burford for the tenement, that Burford should pay all taxes, rates, and charges whatsoever, which he did. If the taxes, rates and charges usually deemed tenant's taxes, are to be deducted from the 10*l.* which the tenant agreed to pay to the landlord, the tenement was not of the annual value of 10*l.*; but if those taxes are not to be deducted, the tenement was of the value of 10*l.* This case was expressly brought to reverse *Rex v. Framlingham (supra)*. Lord *Ellenborough, C. J.* "If we were sitting to hear that case argued, the argument might have weight; but it having been settled nearly forty years ago, that the rent reserved (all fraud apart) is to be taken as the criterion of the value of the tenement, without reference to the payment of the rates and taxes by the landlord, we are not now at liberty to disturb

that decision upon any speculative opinion. (a) The tenant may be said to obtain credit for a tenement in one sense of the yearly value of 10*l.*, and I cannot say that the former decision is so directly against the words of the act as necessarily to be wrong." *Grose, J.* "It is better *stare decisis.*" *Le Blanc, J.* "If we were to decide against the former case, it would let in the deduction from the amount of the rent reserved of every payment to be made by the landlord, which might have been thrown upon the tenant. The rule being settled otherwise, it is better to abide by it." *Bayley, J.*, concurred. Order of sessions quashed.

Rex v. Hellingly, 10 *East*, 41. Removal from Hellingly to Brighton. Order quashed. Case:—The pauper's husband hired a house at Brighton by the week, paying four shilling a week for the same, which house he so continued to occupy and sleep in. The house so hired and occupied by him is at all times of the year of the value of 4*s.* a week if taken by the week; but is not of the value of 10*l.* per annum if taken by the year. By Lord *Ellenborough, C. J.* "The words of the statute enable the justices to remove any person who 'shall come to settle in any tenement under the yearly value of 10*l.*;' that is, upon a tenement, the value of which is to be estimated by its annual value, *to be let by the year*, at the time of the party's coming to settle upon it. It need not in fact be let for a whole year; it may be let only by the week or the day. But those lettings are only *media* for ascertaining the yearly value, if nothing appear to the contrary. But when it is expressly found, that the tenement is not of the value of 10*l.* a year, to be taken by the year, it is impossible for any reasoning to make the matter more clear. The statute, speaking of *yearly* value, means the value of the tenement to be let by the year." *Le Blanc, J.* "A settlement may be gained by the taking of a tenement for less than a year, if it is of an aliquot value which would amount to 10*l.* a year. But where that has been decided, it did not appear that the estimated value depended on the mode of letting by the week or other period shorter than a year. But the letting at so much a week was merely a criterion of the yearly value. Here the value of 10*l.* within the year depended on the taking being for a shorter period than a year. No person would have paid that yearly value for it. If this would confer a settlement, it would be next contended that a field, which nobody would take at 10*l.* a year, if it could be let out by the tenant for one night (which he might do to drovers of cattle on the road) at that rate would confer a settlement. I am not disposed to extend the words of the act further than the cases have already gone." *Bayley, J.* "The question was, whether the value of this tenement be 10*l.* a year? To ascertain that, the only fair criterion is, whether it would let at a single letting, without further trouble, for that sum. If it could be so let, the landlord might reside at a distance; but if it is to be let weekly, he must either reside on the spot and have additional trouble in letting it, or he must employ somebody, and pay him; in either case, part of the 10*l.* obtained within the year by weekly lettings would go either to compensate himself for his trouble, or in defraying the expense of his agent, besides the risk of not being able to let it for three weeks in the course of the year, in which case the actual rent would be reduced under 10*l.* The statute then, speaking of yearly value, and the question being whether the tenement were worth 10*l.* a year by the single letting, without further trouble, and that being negatived, no settlement was gained." Order of sessions confirmed.

11. *The Value.*

If tenement be worth less than ten pounds per annum, if let by the year, it is not sufficient that it produce more than that sum when let by the week.

12. THE VALUE UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57; AND 1 WILL. IV. c. 18.

12. *The Value, &c.*

These statutes are similar in this respect, and require that the tenement should be *bonâ fide* hired or rented at and for the sum of 10*l.* a year at the

(a) But now see 4 & 5 W. IV. c. 76, s. 66, that no settlement is gained unless the tenant be rated and pay a year's poor rate.

12. The Value. least: and these statutes put an end to the too frequent perjuries and expensive litigations relative to the actual annual value of the premises.

By 6 Geo. IV. c. 57, s. 2, it is provided, that it shall not be necessary to prove the actual value of such tenement (*ante*, 584); it will, consequently, suffice to establish that it was *boná fide* rented at 10*l.* a year; and it will be no answer to prove that the premises were not of the yearly value of 10*l.*

If the rent is 10*l.*
the real value is
immaterial.

Rex v. Ashfield-cum-Thorpe, 4 M. & R. 709; 9 B. & C. 939. Order of removal of W. Miller from Snape to Ashfield-cum-Thorpe confirmed. Case:—The pauper, after the passing of 59 Geo. III. c. 50, and before that of 6 Geo. IV. c. 57, *boná fide* hired a house and land for one year in Snape, at a rent exceeding 10*l.*, and held, occupied, and paid the rent for more than one year, though at the time the value of the holding and occupation was under 10*l.* Bayley, J. "The statute 59 Geo. III. c. 50, requires that the tenement be *boná fide* hired at and for the sum of 10*l.* a year. It seems to me that by that statute the actual value is immaterial, provided the tenement be *boná fide* hired at the specified rent. The provision, 'that it shall not be necessary to prove the actual value of the tenement,' was introduced into the 6 Geo. IV. c. 57, for greater caution." Littledale, J. concurred. Parke, J. "One fertile source of those disputes and controversies (mentioned in the recital of the 59 Geo. III. c. 50), was the necessity of proving the value of the tenement; and that statute, in order to prevent litigation, requires that the tenement shall be *bona fide* hired at the sum of 10*l.* a year. Generally speaking, the rent agreed upon between the landlord and tenant is the best criterion of value, and I think the legislature meant to dispense with any other proof of value. If the tenement hired turns out to be of much less annual value than 10*l.*, that would be evidence to show that it was not *boná fide* hired at that sum. But if it be *boná fide* hired at that sum, I think that is sufficient. That being so, the pauper gained a settlement in Snape." Order of sessions quashed.

But now see 4 & 5 W. IV. c. 75, s. 66; *Rex v. Pickering*, 2 Bar. & Adol. 267; *post*, 645.

Hiring of a house
at 10*l.* a year, the
landlord paying
all levies and rates
chargeable on the
house, is a suffi-
cient hiring and
renting a tene-
ment at and for
the sum of 10*l.*
a year within the
56 G. 3, c. 50, and
6 G. 4, c. 57.

Rex v. Thurmaston South End, 1 Bar. & Adol. 731. John Simpson and his wife and children were removed from Thurmaston South End to St. Margaret, Leicester. Order discharged. Case:—At Michaelmas, 1824, the pauper, John Simpson, took a house for one year in St. Margaret, Leicester, of Thomas Mawley, at the annual rent of 10*l.*, the said T. Mawley agreeing to pay all levies and rates chargeable upon the house; and under this agreement the pauper occupied the house for one year, and paid 10*l.* by four quarterly payments. The question submitted by the court of quarter sessions was whether the payment of the levies and rates by the landlord of the house would defeat the settlement of John Simpson in the appellant parish of St. Margaret. Lord Tenterden, C. J. "Where the intention and the object of the legislature are doubtful, it is a safe rule of construction to be guided by the words of the act of parliament, taking them in their plain ordinary sense. The statute 59 Geo. III. c. 50, requires that the tenement shall be *boná fide* hired at and for the sum of 10*l.* a year at the least, for the term of one whole year, and that the rent for the same be actually paid. Here the house was *boná fide* hired at the sum of 10*l.*, and the rent has been actually paid for the term of one whole year. If it had been the intention of the legislature that the rent to be paid to the landlord should be 10*l.*, exclusively of all tenant's taxes, they would have said so in express terms. Perhaps the matter did not occur to the framers of the act; and if not, we cannot introduce such a provision. If it did occur to them, then the legislature must be considered as having intentionally omitted that provision. The cases put, of collateral benefit wholly unconnected with the occupation of the tenement, are not in point. In those instances, if they occurred, there might be ground for saying that the house was not *boná fide* rented at 10*l.* a year. But here the benefit conferred on the tenant was in its nature connected with the occupation. We cannot say that he has not *boná fide* paid 10*l.* rent." Littledale, J. "This case appears to me to fall within the express words of the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. The tenement was *boná*

fide hired at and for the sum of 10*l.* a year, and the rent for the same actually paid for the term of one whole year. If the legislature had intended to make a distinction between cases where the landlord paid the rates and taxes, and where he did not, they would have introduced an express provision for that purpose. Their attention must in all probability have been called to it by the decisions in *Rex v. Framlingham* (*Burr. S. C.* 748), and *Rex v. St. Paul's, Deptford* (13 *East*, 320; *ante*, 642.) In those cases it was considered that the 'yearly value of 10*l.*' mentioned in the 13 & 14 *Car. II.* and 9 & 10 *Will. III.*, might be calculated without deducting the rates and charges usually deemed tenant's taxes. The legislature, by not altering the law established by those decisions, have adopted it. Here the word rent must be taken in its ordinary sense, to import not what the landlord put in his pocket, but the sum paid by the tenant for the use of the premises. The payment of the taxes by the landlord was a collateral term introduced by agreement. I think, therefore, the house was hired at and for the sum of 10*l.* a year at the least within the meaning of the 59 *Geo. III. c.* 50, and that the rent for the same has been paid, and therefore that the pauper gained a settlement in the parish of St. Margaret, Leicester." *Taunton, J.* "I am of the same opinion. A general principle may be considered as established by *Rex v. Framlingham* (*Burr. S. C.* 748), and *Rex v. St. Paul's, Deptford* (13 *East*, 320), with reference to all cases where tenant's taxes are paid by the landlord; viz., that if the sum paid to him by the tenant be 10*l.*, it will be a sufficient yearly value of 10*l.* to gain a settlement. That being so, does the statute 59 *Geo. III. c.* 50, revoke those decisions, and give any new rule on the subject? I find nothing of that sort. The statute merely requires, in addition to the hiring of a tenement at and for the sum of 10*l.* a year, that the rent shall be paid. The taxes here are collateral to the rent. As the decisions just mentioned were well known long before the statute 59 *Geo. III. c.* 50, passed, it may be presumed that if the legislature had intended to alter the law in this respect, they would have used the words 'at and for the sum of 10*l.* per annum, clear of all taxes, parliamentary and otherwise, and all other outgoings.' In *Rex v. St. Paul's, Deptford*, the judges, who expressed some doubts, still felt themselves bound by the authority of *Rex v. Framlingham*; and if so, *à fortiori*, we are bound by the two cases." Order of sessions quashed. (See also *Rex v. Castlemorton*, 3 *B. & Ald.* 588; *Rex v. North Bedburn*, *Cald.* 452.)

Rex v. Pickering, 2 *Bar. & Adol.* 267. John Todd, his wife and child, were removed from Pickering to Newton. Order quashed. Case:—Prior to the 6th of April, 1826, John Todd took of Hugh Kirby a dwelling-house and thirty-two acres of land, at the annual rent of 20*l.*, to be holden from the 6th of April, 1826, for one year then next ensuing. The dwelling-house and twenty-seven acres of the land were situate within the township of Newton, and the remaining five acres within that of Pickering. At the period specified he entered under such yearly hiring, and occupied the whole of the said premises for the said term of a year, and at its expiration paid the said reserved rent of 20*l.*, residing during the whole of such time in the said dwelling-house. It was objected by the counsel for the appellants, that there was no evidence of the tenement within the township of Newton being of the yearly value of 10*l.* Whereupon the counsel for the respondents offered to prove, that the proportion of the rent payable in respect of the dwelling-house and land in Newton was more than 10*l.* in amount, either by showing the land within Pickering to be of less value than 10*l.* a year, or by showing the dwelling-house and land within Newton to be of greater annual value than 10*l.* But the sessions refused to admit such evidence. It was also stated by the counsel for the appellants, that he was prepared to show that the land within the township of Newton was of no greater annual value than 6*l.* 5*s.* 3*d.* Lord *Tenterden, C. J.* "It was contended that no evidence of the value of the tenement could be received. The words of the statute 6 *Geo. IV. c.* 57, are undoubtedly very strong. The preamble recites, 'that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tene-

Settlement gained by the payment of rent of 20*l.* for the occupation of land lying in two parishes; and evidence is admissible to show that the amount of rent paid for the land lying in one of those parishes is sufficient to confer a settlement, notwithstanding the provision of 6 *G. 4, c.* 57.

13. The Rent.

ments in virtue of which they have paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation, and that doubts had been entertained whether the 59 Geo. III. c. 50, had been effectual for the purpose of altering the law in respect of proving the annual value of tenements so rented.' Then section 2 enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bond fide* rented by such person at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house, or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.' Then comes the proviso that it shall not be necessary to prove the actual value of such tenement. Now it is said that as evidence of the entire value of the tenement as contradistinguished from the rent was not admissible, and no distinction is taken between cases where the whole tenement is situate in one parish and where it is situate in several, the evidence ought not to have been received in this case, and consequently that no settlement was gained in the parish of Newton. The effect of that would be, if the argument were to prevail, that if a party rented land in two parishes, for which he paid an annual rent of 300*l.* or 400*l.*, and one acre was in one parish and the residue in the other, he would not gain a settlement in either parish. We think the legislature never could have so intended. The rent stipulated to be paid must be taken, for the purposes of this case, as the criterion of the value of the entire premises; but evidence was admissible to show that the rent payable in respect of the land in the township of Newton amounted to 10*l.*; that is, supposing the house and all the land to be of the value of 20*l.*, it was a question for the sessions to consider how much of that sum was paid in respect of the land in Newton. The amount must depend upon the relative quantity and quality of the land in each parish. The case must go back to the sessions, in order that they, taking the entire value of the tenement to be 20*l.* (the annual rent), may ascertain by evidence how much of that sum was paid in respect of the dwelling-house and land in Newton." Case sent back to the sessions.

13. The Rent, &c.

13. THE RENT MUST BE PAID UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57; AND 1 WILL. IV. c. 18.

The *actual* payment of any rent for the purpose of gaining a settlement was first rendered necessary by 59 Geo. III. c. 50 (*ante*, 583). The 6 Geo. IV. c. 57 (*ante*, 584), contains a similar though less extensive provision. By the former statute the rent, whatever the amount, must be paid for the term of one whole year at the least *by the person hiring the same*. These latter words are omitted in 6 Geo. IV. c. 57; and under that statute it was sufficient if the rent was paid by the person hiring or by any other person. But the 1 Will. IV. c. 18, again requires that the rent should be paid *by the person hiring the same*; and by the second section, which is retrospective, payment of 10*l.* is sufficient.

In ascertaining whether the pauper has acquired a settlement it is most material to attend to the *dates* of the transactions. The rent must be paid *by the person hiring* the tenement under 59 Geo. III.; *i. e.* from 2d July, 1819, to 22d June, 1825: from this time (the date of the 6 Geo. IV. c. 57), to the 30th March, 1831, the rent may be paid by any person. But from the latter period (the date of 1 Will. IV. c. 18), the payment must be by the person hiring the premises. The *whole* rent must be paid under 59 Geo. III., but rent to the amount of 10*l.* is sufficient after 22d June, 1825.

Rex v. Dursley, 3 Bar. & Adol. 465. Thomas Merritt, his wife and six children, were removed from St. George's, Hanover-square, to Dursley. Order confirmed. Case:—In March, 1829, the pauper (being then settled in Dursley) took a house in St. George's, Hanover-square, at a yearly rent of 36*l.* He resided in and occupied that house from Lady-day, 1829, until

The second sect. of 1 W. 4, c. 18, which provides, "that where the yearly rent shall exceed 10*l.*, payment to the

August, 1830, and paid during such occupation several sums on account of rent, amounting in the whole to 29*l.* The question for the opinion of the court was, whether the statute 1 Will. IV. c. 18, s. 2, which passed on the 30th March, 1831, applied to this case, so as to enable the pauper to obtain a settlement in St. George's, Hanover-square, by such renting, occupation, and payment. If it did apply to this case the order of sessions was to be quashed; if otherwise, to be confirmed. Lord *Tenterden*, C. J. "I think we must understand the second section to be retrospective, because it would be useless unless it were so. The words that 'payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the said recited act' import that, as to the payment of rent, the statute is declaratory. If the words had been 'it is hereby declared that payment, &c. shall be deemed sufficient,' there could have been no doubt that the clause would be retrospective. Here the words are the same in effect." *Littledale*, J. "The act is not very clearly expressed; but taking the words in the first section, 'the rent for the same to the amount of 10*l.* at the least,' to be descriptive of the amount of rent to be actually paid, which I suppose is meant, then the effect of the first section is, that 'after the passing of the act no settlement shall be gained unless rent to the amount of 10*l.* be paid;' and if that be so, then unless the second section be retrospective, it adds nothing to the former." *Parke*, J. "This act is to 'explain' the former. Sect. 1 provides for settlements by renting for the future. Sect. 2, therefore, unless it be retrospective, is without object." *Patteson*, J. concurred. Order of sessions quashed.

Rex v. Ruthin, 2 Nev. & M. 97; 5 B. & Ad. 215. Appeal against the removal of David Jones, his wife and family, from Ruthin to Cwm. Order quashed. Case:—The appellants admitted the pauper's settlement to be with them, unless he had acquired a subsequent one under the following circumstances. The pauper took from Mr. Eddisbury, who was mortgagee in possession, a farm called Tynyffirth, in the parish of Llanrhaidr yn Cimmerch, as tenant from year to year, at the rent of 24*l.* per annum. The tenancy was to commence according to the custom of the country; viz., as to the land, from St. Andrew's-day, 1829, and as to the farm-house and outbuildings, from the 1st of May following. The rent was made payable half-yearly, on the 25th of March and the 29th of September following, though, according to custom, the first half-year was not to be called for until St. Andrew's, 1830, and the second half-year on the 1st of May, 1831. The pauper entered upon the premises at the appointed periods, and occupied the land until after the 30th of November, 1830, and the house and outbuildings until the 1st of May, 1831. In August, 1830, the mortgagor and mortgagee having agreed upon a sale of the property, and a purchaser having been found, the three parties met by appointment, and were attended by the pauper's wife, whose husband sent her on his behalf, he having been desired by Shaw, the mortgagor, to come to pay his half-year's rent. Mr. Eddisbury insisted upon being paid the half-year's rent due the 25th of March, 1830, and declining to complete the sale without it, the pauper's wife said that her husband was then unprepared, owing to its being demanded before the usual time, namely, St. Andrew's-day: whereupon Shaw, being anxious to avoid delay in order to get the business concluded, agreed, without the previous knowledge or request of the pauper, but with the consent of the pauper's wife, to pay the 12*l.* for the pauper, and did so. The pauper had not repaid the amount when the appeal was heard; but there had been disputed accounts between him and Shaw. The year's holding as to the land, which was the principal taking, was begun and concluded, and the rent was due and paid as before mentioned, while the stat. 6 Geo. IV. c. 57, was in operation, and before the passing of the act of 1 Will. IV. c. 18; but the year's holding of the house and outbuildings was not concluded until the 1st day of May, which was after the last-mentioned act came into operation. The court of quarter sessions found that the pauper had gained a settlement in Llanrhaidr yn Cimmerch, and quashed the order, subject to the opinion of the court upon the case. *Denman*, C. J. "The only question here is, whether the rent to

13. *The Rent.*

amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under 6 G. 4, c. 57," is retrospective; and therefore, where a pauper in 1829 hired a house at a yearly rent exceeding 10*l.* occupied it for more than a year, and paid not a whole year's rent, but above 10*l.*, it was held that he thereby gained a settlement.

The first section of 1 W. 4, c. 18, which requires that the rent to the amount of 10*l.* for a dwelling-house, building, &c. must be paid by the person hiring the same, is prospective only.

13. *The Rent.* the amount of 10*l.* has been actually paid. The party entitled to receive the rent has been satisfied, and the stat. 6 Geo. IV. c. 57, does not require that it should be actually paid by the party hiring. The sessions might have decided this case themselves." *Littledale, J.* concurred. *Parke, J.* "The rent to the amount of 10*l.* has been paid by some person, and that is sufficient. The second section of the 1 Will. IV. c. 18, is retrospective; but the first is prospective only. The enactment is, that from and after the passing of that act no person shall acquire a settlement except as there stated." *Patteson, J.* "The first section of 1 W. IV. c. 18, prevents the gaining of a settlement, unless the rent to the amount of 10*l.* at the least shall be paid by the party hiring; if that were retrospective, section 2, which provides, that where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the recited act, would have been unnecessary." Order of sessions confirmed.

The rent must be paid before any order of removal made.

Rex v. Ampthill, 2 B. & C. 847; 4 D. & R. 447; 2 D. & R. Mag. Ca. 297. Order made on the 5th day of August, 1829, for the removal of J. Apsley from St. Botolph to Ampthill, confirmed. Case:—The pauper, a ropemaker, came at Midsummer, 1822, to reside in a house in St. Botolph; he had hired it of one Mitchell for 10*l.* a year; he put his own furniture into it, worth 15*l.* or 16*l.*; he continued to live in it above a year, and in July, 1823, being much distressed, he applied to the parish officer of St. Botolph for relief, who refused to give him any, but afterwards, in obedience to the order of a magistrate, gave the pauper 14*s.* on the 31st of July. The day after this relief was given, Mitchell called for his rent of 10*l.*, but gave the pauper a fortnight to pay it. On the 5th of August, the pauper was removed to Ampthill. He then applied to Furze, an auctioneer, to buy his furniture, to enable him to pay his rent. Furze went to Cambridge, valued it at 13*l.* 3*s.* (exclusive of his tools, which were worth 5*l.*) and agreed to buy them for 10*l.*, which he paid to the pauper, who kept the key of the house all the time, and returned to it about the 14th of August, on which day Mitchell had sent a person to distrain for the rent, but no distress was taken, because the bailiffs, Furze, and the pauper, went together to Mitchell, and the rent was paid by the pauper with the 10*l.* he received from Furze. Another auctioneer had been employed to sell some of the furniture, under the direction and according to the inventory of Furze, and sold it for 3*l.* 13*s.*, and after this sale the remainder of the furniture and the tools might be worth 6*l.*; without the tools, the remaining furniture would be worth 1*l.* The sessions decided that the house was not of the annual value of 10*l.* *Bayley, J.* after adverting to other points in this case, for which see *post*, said, "I am of opinion also that on the 5th of August, 1823, when the order of removal was made, the pauper had not acquired any settlement in St. Botolph. The 59 Geo. III. c. 50, introduces new provisions with respect to the gaining of a settlement by renting a tenement. Before that statute, any person renting a tenement of the annual value of 10*l.*, and residing on it forty days, obtained a settlement; but that statute enacts, that no person shall acquire a settlement by reason of dwelling for forty days in any tenement rented by such person, unless such tenement shall be *bonâ fide* hired by such person at and for the sum of 10*l.* a year at the least for the term of one whole year, nor unless it shall be held and the rent for the same actually paid for the term of one whole year at the least by the person hiring the same. Now in this case the pauper took the tenement at Midsummer, 1822, for one year; the year expired, and the rent became due and payable at the expiration of that time; and if the pauper had made a legal tender of the rent upon the premises before sun-set, or the last hour of the day when it became due, and had been able to show that he was always afterwards ready to pay it, possibly such a tender might have been considered in point of law as equivalent to payment. But in this case he had neither paid the rent nor done any thing which, in point of law, can be considered as payment at the time when the order of removal was made. He had not done what was requisite, in order to give him a settlement by the renting of a tenement, according to the provisions of the 59

Geo. III. c. 50. The order of removal, then, was a valid order at the time when it was made, and the subsequent payment of the rent cannot affect it. I am therefore of opinion that in this case the pauper, by having applied for relief from the parish in July, 1823, and having received that relief under an order of magistrates, was then actually chargeable, and therefore removable under the 35 Geo. III. c. 101; and I am also of opinion that when the order of removal was made he had not acquired any settlement in St. Botolph, because he had then neither paid a year's rent nor done any act which, in point of law, can be considered as equivalent to payment." *Holroyd, J.* "A party, in order to gain a settlement by renting a tenement, is required by the 59 Geo. III. c. 50, to do certain things which were not requisite before. One of the things required is, that there should be a payment of one year's rent by the tenant to the landlord. Here the year's rent had become due and payable at Midsummer, and on the 1st of August the landlord gives the pauper a fortnight's time to pay it, and before it is actually paid, and before the pauper had done any act which the law considers equivalent to payment, the order of removal was made. At that time then the pauper had not gained any settlement in St. Botolph. It is, therefore, unnecessary to consider, whether the finding of the justices that the annual value of the tenement was less than 10*l.* is material or not. I am of opinion that the subsequent payment of rent does not, by retrospective operation, give the party a settlement in St. Botolph at the time when the order of removal was made." *Littledale, J.* "It is unnecessary in this case to decide the question, whether in opposition to the contract of the parties any other value than the rent actually payable can be set up, because, since the statute 59 Geo. III. c. 50, no settlement can be gained until a year's rent is actually paid. Now in this case the order of removal was made on the 5th of August, and the year's rent was not paid until the 14th. The subsequent payment of the rent cannot, by retrospective operation, give him a settlement at the time when the order of removal was made, and therefore the pauper had not gained any settlement at that time, and having then become actually chargeable he was properly removed." Order of sessions confirmed.

Rex v. Willoughby, 5 Nev. & Man. 457. Appeal against an order of removal from Byfield, Northamptonshire, to Willoughby, Warwickshire, which the sessions confirmed. Case:—The pauper rented a house in the parish of Willoughby, from Michaelmas, 1832, to Michaelmas, 1833, of a Mr. Judd, at the yearly rent of 17*l.* He occupied the house under this hiring for the whole year, and in the month of July paid a half-year's rent, 8*l.* 10*s.* He continued to occupy this house until the 6th of December, 1833, without paying any more rent. On that day he was removed with his family from Willoughby to Byfield, by an order of removal, he having become chargeable to the parish of Willoughby. Against which order, the parish of Byfield appealed to the quarter sessions for the county of Warwick. The appeal was tried on the 1st of January, 1834, and the order confirmed on the merits. On the 7th December, 1833, the pauper's family returned to their house at Willoughby, and on the next day the pauper himself returned and remained there in the same house until the 27th of the following January. On the 11th December, 1833, the pauper borrowed the sum of 8*l.* 10*s.* and paid his landlord his second half-year's rent, due at the preceding Michaelmas. On the 27th of January, the pauper left Willoughby with his family, and went to Byfield, where he remained until the 17th of the following March, when he was removed, by an order of two magistrates, back to Willoughby; and against that order the parish of Willoughby appealed. The question for the opinion of the court is, whether or not the pauper gained a settlement in the parish of Willoughby subsequent to the order of removal of the 6th December, 1833. *Patteson, J.* "This case depends upon the construction which we are to put on the statute, which requires that in order to gain a settlement by residence and renting and occupation of a tenement, the rent shall be paid for the same. There has not been any case in which the court has decided that the rent must be paid within the year of occupation, or within a limited time after the expiration of it. It is said that it is not the

13. *The Rent.*

Where a party rents and occupies for a year a tenement in A. at the yearly rent of 10*l.*, and before payment of the full rent is removed to B. by an order which is not appealed against, or is confirmed on appeal, he may, by a subsequent payment of the remainder of the rent, acquire a settlement in A. under 6 Geo. IV. c. 57, and 1 Will. IV. c. 18. The forty days residence required under this head of settlement must be within the year of occupation, but at what period of the year it takes place is immaterial.

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occupation for a year, nor the payment of rent for a year, but the residence for forty days, that is the substantial ground of the settlement. That I do not deny: I admit that it is so: but still the question is, what is the *date* that is to be given to the settlement when acquired? The *time* of the forty days' residence, whether at the beginning or the end of the year, is immaterial. In this case there was an occupation for a year, residence for forty days, (which residence may be in any part of the year of occupation,) and half a year's rent paid. Under these circumstances, an order of removal was made; and there can be no doubt but that at that time no settlement was gained. The order was appealed against, and pending the appeal the party returned to Willoughby, and paid the remainder of the rent, so as to complete the conditions of the act of parliament. It is quite clear that this having been done, so as to fill up all the requisites, the party gained a settlement, unless it is affected by the order of removal which intervened. The order has been treated in the argument as if it had the effect of putting an end to every inchoate settlement. I do not find any authority for so treating it. *Rex v. Kenilworth* (2 T. R. 598, *ante*, 441) is relied on, but does not support the position for which it is cited. That was a case of hiring and service: the servant was removed under an order, which was not appealed against; and he returned to his master's service at Birmingham. If there had been an appeal against that order, it is not doubtful but that the party would have had a right to return to his master, and might have completed his service; and if he had done so, he would have acquired a settlement in Birmingham. So Mr. Justice Buller appears to have considered; for he says, 'the question here is, whether the pauper gained any settlement in Birmingham subsequent to the order of removal? Now, in this case he did no act by which he could gain a settlement in Birmingham after the order of removal. *What I rely on* is this, that after the order of removal, unappealed from, the pauper *could not legally return* to the parish from whence he had been removed.' From this it follows, that, in his opinion, if the order *had* been appealed from, the pauper might have returned, and would have gained a settlement subsequent to the order. The learned judge then said, that it would have been a crime in the pauper to have returned, and that the order of removal therefore put an end to the contract of service. Whether he was right or wrong in this reasoning, is not now to be determined; but it shows how far his remaining words, which are the words relied on, are properly applicable to this case. The words are, 'now in this case the pauper returned after the order of removal, to the parish of Birmingham, where he served a month; but that could not gain him a settlement there; for the act subsequent to the order of removal, by which he was to gain a settlement, *should be complete in itself*.' It is sought to be inferred from this, that all that is done towards gaining a settlement before the order of removal, must in every case be put out of consideration. These words, taken by themselves, might seem to warrant such an inference; but they must of course be construed *secundum subjectam materiam*, and being so construed, the inference is altogether shut out. The decision in *Rex v. Kenilworth* appears to me to rest on no legal principle. Can it possibly be said that if a man is serving or renting a tenement, and the parish officers choose to get him removed, the contract is thereby put an end to? I see no reason for so saying. It is true that the order of removal is conclusive, that at the time of making the order the pauper had no settlement in Willoughby; but the whole question comes to this, whether, when a man has done all that is required except one thing, the payment of the rent, and such payment is made after an interval, the settlement is to take effect from the time of completing the *main* requisites, or from the final completion by payment of the rent? We have the authority of *Rex v. Ampthill* for saying, that the payment has no reference back; and therefore, if the settlement is not to be dated from the time when the last requisite is complied with, there never can be a settlement gained in such case. The argument of Mr. Waddington would indeed go this length. That, however, cannot be right. The pauper did in this case, in my opinion, gain a settlement in Willoughby subsequent, in point of date, to the order; and there-

fore the order of sessions must be confirmed." *Williams, J.* "I am of the same opinion. There is no case to show that the payment of the rent must be within the year of the occupation; and there is nothing in the nature of an order of removal to make a payment of the rent, after the order, have a different effect from a payment where no such order has been made. The words of Mr. Justice *Buller* have been relied on; but those words, when taken in connection with the doctrine which he had just laid down, and with which (whether the doctrine be right or wrong) they are consistent, are no authority for the position in support of which they have been cited." *Cole-ridge, J.* "It was conceded in the argument, that all the facts of this case might have existed, with the exception of the order of removal, and that a settlement would in such case have been gained. The whole question therefore turns upon the effect of the order. Mr. *Waddington* argues, that where an order of removal has been made, every thing necessary to the gaining a settlement must be commenced anew after the order; and for this position he cites *Rex v. Kenilworth*. Now the decision in that case, when examined, will be found to be no authority at all here, as it arose upon a different state of things, and proceeded on a supposition that the order of removal dissolved the contract, which, after *Rex v. Fillongley*, certainly cannot be said to be the case here. The dictum of Mr. Justice *Buller* must be considered with reference to the subject-matter. The question then is, what is the effect of the order of removal? It merely determines the conclusion of law upon the facts existing at the time when it was made. If, at the time of making the order, nine only out of ten requisites had been complied with, then the order is conclusive, that a settlement was not gained by the performance of the nine requisites; but there is no authority whatever for saying that, upon the tenth requisite being added, the order is to have the effect of preventing a settlement from being gained." Order of sessions confirmed.

Rex v. Ramsgate, 6 B. & C. 713; 9 D. & R. 688. G. Sweetman was removed from Ramsgate to St. Lawrence. Order quashed. Case:—In April, 1825, the wife of the pauper (who was of unsound mind) hired a house in St. Lawrence for one year, at a rent of 15*l.*, payable quarterly. The pauper occupied it for the year, and his wife paid 6*l.* 15*s.* of the rent. Soon after the year, the landlord distrained for the remaining rent, and received 4*l.* 17*s.* 6*d.*, making the total rent received 11*l.* 12*s.* 6*d.* *Bayley, J.* "It is very desirable in all cases to adhere to the words of the act, giving to them that sense which is their natural import, in the order in which they are placed. The 59 Geo. III. c. 50, enacts [he then read it]. That statute, therefore, required that the rent (whatever its amount might be) should be paid for the term of one whole year. But as that statute applied only to settlements which might be gained by reason of *renting* a tenement, a settlement might still be gained by paying parochial rates in respect of a tenement of the annual value of 10*l.*, without complying with the requisites of that statute, and that was the cause of much litigation. The 6 Geo. IV. c. 57, was passed to remedy that inconvenience, and it recites, [he here read the recital and enactments; and added,] it is very material to attend to the collocation of these words, 'for the term of one whole year at the least.' They are the last words of a sentence, and, according to grammatical construction, apply to both branches of the sentence. It is contended that they do not apply to the latter branch, 'the payment of rent,' but that the words 'and the rent for the same to the amount of 10*l.*' ought to be construed as if they were in a parenthesis; but I cannot collect from the recital in previous provisions of the act that they ought to be so read. I think they ought to be construed according to the plain import which they bear, and the order in which they are placed. If the legislature had intended that it should be sufficient to pay rent to the amount of 10*l.*, the words 'for

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The whole rent was required to be paid by 6 Geo. IV. (a)

Payment of part, and a distress for the residue, producing more altogether than ten pounds, but less than the entire stipulated year's rent, will not suffice.

(a) The retrospective clause of the 1 Will. IV. c. 18, has rendered payment of 10*l.* sufficient, under 6 Geo. IV.; but it does not apply to the 59 Geo. III. The house was taken in this case before

the 6 Geo. IV. came into operation, but the rent became payable afterwards. The effect of a payment by a distress was argued but not decided. See as to the latter point, *Rex v. Ruthin*, ante.

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the term of one whole year at the least,' should have immediately followed the words relating to the occupation. It is true that the words 'to the amount of 10*l.* a year at the last' create some difficulty, but that difficulty is not such as to warrant us in construing them as if they were placed in an order different from that in which we find them. Taking them in that order, their application is not confined to one branch of the sentence. Undoubtedly it will follow from this construction, that if a person rent premises at a high annual rent he will not gain any settlement unless he pays the whole amount of one year's rent. On the other hand, if the other construction were adopted, a person who rented premises at 15*l.* per annum, and resided three years on the premises, would gain a settlement by paying 10*l.* on account of one year's rent. But I cannot think that was intended: upon the whole, I am of opinion, that the rent actually reserved must be paid for the term of one whole year at the least. The pauper, not having done this, gained no settlement in St. Lawrence." *Holroyd, J.* "I think that the words 'for the term of one whole year at the least,' must be construed according to their nature and import in the order in which they stand in the act of parliament; and so construing them, it appears to me that the rent, which must amount to 10*l.* at least (but which may exceed that sum), must be paid for the term of one whole year at the least." *Littledale J.* concurred. Order of sessions quashed.

Same point.

Rex v. Ashley Hay, 8 B. & C. 27, by the name of *Ashley-de-la-Hay*, 2 M. & R. 21; 1 M. & R. Mag. Ca. 273. Order of removal of John Sneap from Ashley Hay to Mugginton quashed. Case:—At Lady-day, 1825, the pauper hired a farm at Ashley Hay by the year, at the rent of 54*l.* per annum, payable half-yearly. He held and resided upon the farm for more than twelve months, and he paid rent on account of the same to the amount of 40*l.*; but he did not pay a whole year's rent for the same prior to his becoming chargeable to and his being removed by Ashley Hay. He was, prior to the 22d June, 1825, charged in respect of the farm in two poor assessments, and with the public levies or taxes of Ashley Hay; and applications were made to him for payment of such levies or taxes prior to the 22d June, 1825, but he did not pay the same till after the 10th July, 1825. Lord *Tenterden, C. J.* "I entertain no doubt in this case, the more particularly as there has already been one express decision upon the point which it raises. In order to arrive at the true construction of this act of parliament, which it is contended was not done in the case of *Rex v. Ramsgate* (*ante*, 651), it is necessary to consider the state of the law when this act was framed, and the object which the legislature had in framing it. By the statute 59 Geo. III. c. 50, it is quite clear that no person could acquire a settlement by renting a tenement, unless the whole rent for one year was actually paid; and therefore the only question is, whether any alteration in that respect was intended to be or has been effected by the 6 Geo. IV. c. 57. The recital states that inconveniences had been found to exist in consequence of the settlement of the poor being made to depend upon the *the annual value* of tenements which they have rented, or upon *the annual value* of tenements in virtue of which they have paid parochial rates. The recital therefore clearly applies to 'the annual value' only; and the enacting clause, after repealing the former act, and then repeating its words, except so far as it mentions the payment of parochial rates, concludes by declaring that no person shall acquire a settlement by reason of renting a tenement, unless the rent for the same to the amount of 10*l.* be actually paid for the term of one whole year at the least. The true construction of these latter words in my opinion is, that a year's rent, which shall not be less than 10*l.*, but without reference to its being more than 10*l.*, must be paid, in order to entitle the party to a settlement. It is true, the words 'to the amount of 10*l.*' were not inserted in the former act; it is unfortunate that they have crept into the present act, and they have probably done so through mistake or inadvertence; but they do not appear to me to alter the spirit and meaning of the enactment. I think the passage may be read as if those words were not in it; that they may in fact be rejected as surplusage. This being so, the present case is governed directly by that of *Rex*

v. Ramsgate, and no settlement has been acquired in Ashley Hay." The other judges concurred. Order of sessions quashed.

Rex v. Carshalton, 6 B. & C. 93; 9 D. & R. 132; 4 D. & R. Mag. Ca. 249. Charlotte Long was removed from Carshalton to Wandsworth. Order quashed. Case:—T. Long, the husband of the pauper, at Lady-day, 1824, came to reside in a house at Carshalton, which he had hired of his father-in-law by the year, at the rent of 14*l*. He put his own furniture into the house, and continued to reside there until July, 1825, when he died in possession. During his life-time, no more than 25*s*. was paid by him on account of the rent. His widow, after his death, continued to reside in the house until September following, when the landlord put in a distress, under which he seized the furniture and goods put in by T. Long, which were purchased by the landlord. The following was the receipt: "Received from Mr. Savage, on advance of goods, 12*l* 15*s*. for balance of rent due from T. Long, to Midsummer, 1825." Signed. *Abbott*, C. J. "The question is, whether the pauper had a derivative settlement from her husband; or in other words, whether the husband had acquired a settlement in Carshalton at the time of his death. I think he had not, whether we consider the 59 Geo. III. or the 6 Geo. IV. as the governing law. There was not any payment of rent by the person hiring the tenement, as required by 59 Geo. III.; nor was there any payment of one whole year's rent, as required by the 6 Geo. IV. at the time of his death; and I think that the subsequent payment by means of the sale of his goods, is not sufficient to satisfy the requisites of that statute. The husband not having acquired a settlement in his life-time, the pauper cannot have any derivative settlement." *Bayley*, J., *Holroyd*, J., and *Little-dale*, J., concurred. Order of sessions quashed.

Rex v. Kibworth Harcourt, 7 B. & C. 790; 1 M. & R. 691; 1 M. & R. Mag. Ca. 255. Order of removal of James Asker from Kibworth Beauchamp to Kibworth Harcourt. Case:—About Lady-day, 1825, the pauper took of Thomas Bradshaw a house and garden situate in Kibworth Beauchamp, at the rent of 10*l*. for a year, to commence at the ensuing Michaelmas. The house and garden were then in the occupation of one Cooper, whose term expired at Michaelmas, but Bradshaw said he should expect Cooper to stand as tenant till Michaelmas, and should expect the rent when Matthew Waterfield, who was tenant of other premises to Bradshaw, paid his: and it should all be put in one receipt. The pauper was let into possession immediately by Cooper, and paid rent up to Michaelmas to Cooper; after which time he continued to occupy the premises, and paid rent as after mentioned up to Michaelmas, 1826. Early in the pauper's tenancy, Waterfield, then being churchwarden of Kibworth Beauchamp, called upon the pauper, and represented to him that Bradshaw had let the pauper's premises, together with other premises, to him, Waterfield, and that the pauper was thenceforth to pay the rent quarterly to him. At the same time Waterfield told the pauper that he should make a reduction in his rent of 8*s*. a year, to which reduction the pauper assented, and a rent of 9*l*. 12*s*. was accordingly paid by the pauper to Waterfield, in the course of that year, by four quarterly payments, namely, the first two payments to Matthew Waterfield, and the last two, after the death of Matthew, to John Waterfield, his brother and successor in the premises. At the end of the year, a sum of 55*l*. was carried by John Waterfield to Bradshaw, the landlord, which sum included 10*l*. for the pauper's rent of the house and garden for the year just completed, and the residue was composed of rent for the other premises occupied by Waterfield. Bradshaw returned 5*l*. to Waterfield, and gave him one receipt for the whole rent. It further appeared that John Waterfield was reimbursed out of the parish funds the sum of 8*s*. paid by him to the landlord, over and above the 9*l*. 12*s*. The sessions found that there was fraud in this case on the part of the township of Kibworth Beauchamp, but that neither the landlord nor the pauper was a party to the fraud. *Bayley*, J. "If 6 Geo. IV. c. 57, had required

13. The Rent.

A person hiring and occupying a 10*l*. tenement for more than a year, and after his death the rent is paid out of the proceeds of the sale of his effects, gains no settlement either under the 59 Geo. 3, c. 50, or the 6 Geo. 4, c. 57.

Rent paid by the churchwarden sufficient, under 6 Geo. 4, c. 57. (a)

(a) See this case observed upon by Will. IV. c. 18, the rent must be paid *Bayley*, J., *post*, 661. But now by 1 by the person hiring.

13. *The Rent.*

that the rent should be paid by the pauper, there would be some difficulty in overcoming the fact of fraud found. I am of opinion that the pauper did acquire a settlement by renting a tenement in Kibworth Beauchamp under the 6 Geo. IV. c. 57. The renting, upon which the question in this case depends, did not commence till Michaelmas, 1825, after that act came into operation; therefore the former act of 59 Geo. III. c. 50, does not appear to me to bear upon the case. The new act does not require that the whole rent shall be paid by the person hiring the tenement, but only that it shall be 'actually paid.' Here the whole rent of 10*l.* was actually paid; and though a part of it was paid, not by the pauper, but by a third person, still the whole having been paid, I think the requisites of the statute have been satisfied in that respect." (a)

Where the payment of the rent by the parish officers for the occupiers was stated to have been made fraudulently: Held, that no settlement was gained under 6 Geo. 4, c. 57.

Rex v. St. Sepulchre, Cambridge, 1 Bar. & Ad. 924. Appeal against an order removing Thomas Kisby and family from Holy Trinity to St. Sepulchre, both in Cambridge. Order confirmed. Case:—About Michaelmas, 1827, the pauper, who was before settled in St. Sepulchre, hired of one Sophia Bones a house situate in the parish of St. Andrew the Great, in Cambridge, at the rent of 10*l.* per annum, payable quarterly. He entered upon it at Michaelmas, 1827, and occupied it till Christmas, 1828. His wife paid the first quarter's rent at Christmas, 1827, the next soon after Lady-day, 1828, and 2*l.* towards the next, a little after Midsummer, 1828, but no more was ever paid by her or the pauper. The pauper, about the time he gave up the house (Christmas, 1828), went to the parish officers of St. Sepulchre, and asked one of the overseers for a little assistance, as he was rent run; but the overseer gave him nothing then, stating that he was only just come into office, but he would see the other officers. The pauper went a second time to the same overseer, when he said "something must be done." It further appeared that the overseer did not know when the pauper applied for relief that his rent was 10*l.* a year, but the landlady having applied afterwards for the rent, he then knew the amount of rent, and that the pauper lived out of the parish; it did not however appear that at that time the overseer knew that the pauper had inhabited the house a year. The parish officers met, and determined to pay the remainder of the pauper's rent, and the amount (5*l.* 10*s.*) was paid by the same overseer to Miss Bones. The sessions found that the payment of the 5*l.* 10*s.* was fraudulent, with an intention of settling the pauper in St. Andrew the Great. *Per curiam*: "The sessions having found that the 5*l.* 10*s.* was paid fraudulently, no settlement was gained. It cannot be the meaning of the statute that the hiring or renting must be *bonâ fide*, but that the payment of the rent may be *malâ fide*." Order of sessions confirmed.

Rex v. Ditchet, 9 B. & C. 183; 4 Man. & R. 458 (see post, 661). Bayley, J. said "That the words 'by the person hiring the same,' may be considered as struck out of the 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or by any other person, i. e. provided the payment be made in the lifetime of the party hiring." (*Rex v. Carshalton ante*, 653.)

The words of the act 6 Geo. IV. c. 57 (*ante*, 584), are "paid for the term of one whole year." If the hiring be from an antecedent period, and the tenant hold from the time of hiring into a second year, and then pay a full year's rent, that is sufficient. (*Rex v. Stow, post*, 661.) But payment to the amount of 10*l.* is sufficient from 22d June, 1825.

14. *Occupation under 13 & 14 Car. 2.*

A tenant at 10*l.* a year gains a settlement, although he lets part of the premises to under-tenants.

14. OCCUPATION UNDER 13 & 14 CAR. II.

Rex v. Llandverras, Burr. S. C. 571; 1 Bla. Rep. 603. E. Hughes, father of the pauper, rented a tenement of 10*l.* a year, and paid the rent to the landlord. He lived for above forty days in a part of it, which was of the value of 40*s.* only. Immediately after his taking the tenement he let the residue thereof to under-tenants, without residing thereupon at all himself.

(a) See also *Rex v. Ruthin, ante* 647, and *Rex v. Tibbenham, post*.

It was argued that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10*l.* a year value, and he ought to occupy the whole 10*l.* a year; otherwise many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do so; for then one would gain a settlement by taking, and another by occupying the same tenement. By the court: "In case of a gross fraud, the sessions no doubt will find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that Hughes was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10*l.* a year, and let lodgings. The act doth not require a person renting a tenement of 10*l.* a year to occupy it; it is enough if he rents it and resides forty days in the parish. The ground the act goes upon is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10*l.*, therefore they do not hereby gain a settlement."

Rex v. Newnham, Burr. S. C. 756. The pauper H. Denton, and R. Mann, his wife's father, jointly rented and occupied an estate at Newnham, of 80*l.* a year, for three years. Mann dying about the end of that time, Denton soon afterwards took a house of R. White at Awre, of the yearly rent of 3*l.*, and another estate, consisting of lands, of J. Sergeant, at Awre, at the yearly rent of 8*l.* Mann leaving a widow, and she and Denton being upon the death of Mann jointly possessed of the remainder of the stock, which had been on the estate at Newnham, they went and lived in the house at Awre, and jointly occupied that house and the said estate of 8*l.* a-year, for one year, the stock on the house and estate being partly the property of Denton, and the other part the property of the widow; and sometimes one, and at other times the other of them, sold parts of the stock and received the money for the same: and at the time of taking the tenements by Denton, neither White nor Sergeant knew of any connection subsisting between Denton and the widow. A moiety of the stock was more than sufficient to stock the house and farm. (Lord Mansfield was not in court.) The other three judges declared themselves all thoroughly satisfied that the settlement was in Awre. *Aston, J.*, observed, "that if two persons jointly take a tenement of less annual value than 20*l.*, this will not gain a settlement to either of them. But a man who takes more than 10*l.* in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants who pay him less than 10*l.* a-year, as was determined in the case of *Rex v. Llandverras* (*ante*, 654). The widow Mann was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person, who alone took it, lose his settlement by letting in a joint occupier."

14. Occupation.

Or occupies it jointly with another person.

Joint taking by two must be of the annual value of 20*l.*

15. OCCUPATION UNDER 59 GEO. III. c. 50, 6 GEO. IV. c. 57, AND 1 WILL. IV. c. 48.

It may be doubtful whether the legislature did not intend that "to hold" and "to occupy" should be convertible terms, as they have used them both in these statutes upon the same subject. The courts of law however have felt themselves bound to notice the distinction in their legal signification, in adjudicating upon questions of settlement law, arising since these statutes were passed.

The 59 Geo. III. c. 50, requires that such house or building shall be *held*, and such land *occupied* by the person hiring the same; but the 6 Geo. IV. c. 57, enacts, "That no person shall acquire a settlement unless such house,

15. Occupation under 59 Geo. 3, c. 50, 6 Geo. 4, c. 57, and 1 Will. 4, c. 48.

15. *Occupation.*

A pauper occupied a tenement till within three days of the end of the year, when he died. His family remained in it beyond the year: No settlement was gained under 59 Geo. 3, c. 50.

The hiring of a cottage and land for a year, at the rent of 11*l.* 10*s.* with an agreement that the land should be entered on at Lady-day, 1827, and held till Lady-day, 1828, and the cottage on May-day, 1827, and held till May-day, 1828: Held, to be an occupation for one whole year sufficient to gain a settlement under 6 G. 4, c. 57.

A pauper who rents the whole, acquires a settlement, though he underlets part to lodgers, under 59 G. 3, c. 50

or building, or land, shall be occupied under such yearly hiring for the term of one whole year at the least." And the 1 Will. IV. c. 18, requires that the house, land, or building, shall be *actually* occupied by the person hiring the same.

Rex v. Crayford, 6 B. & C. 68; 9 D. & R. 80; 1 M. & R. Mag. Ca. 208. Order of removal of Sarah Stone, widow, from Bexley to Crayford, confirmed. Case:—At Michaelmas, 1824, Thomas Stone, the pauper's husband, hired a house in Bexley, for a year, at the rent and annual value of 12*l.* He took possession on the 29th of September, and lived in the same till the 26th September, 1825, when he died. His body remained in the house till the 30th. The rent for the first three quarters of a year was paid by him, and for the last quarter by the pauper. The pauper continued in the house till she was removed under the order, and paid rent up to 25th December, 1825. Bayley, J. "The safest rule to adopt in these cases is to adhere to the words of the act. [He then read the 59 Geo. III. c. 56, and added,] The settlement therefore is to be gained by the person who has hired the tenement, and occupied it for one whole year. Here the husband may have hired, but he has not occupied the house for a whole year, inasmuch as he expired three days before the end of the year; and assuming that the wife occupied and paid the rent for a year, still she is not the person who hired the house. This certainly is a very critical case, and perhaps if it had been foreseen by the legislature at the time of passing the act, some provision would have been made to meet it." Order confirmed.

Rex v. Ormesby, 1 Nev. & M. 27; 4 Bar. & Adol. 214. Appeal against an order, whereby W. Milestone and family were removed from Stokesley to Ormesby. Order confirmed. Case:—About Candlemas, 1827, the pauper being legally settled in Ormesby, took of one Emerson a cottage and some land, both in the parish of Kirby. Both the cottage and land were bargained for at the same time, and the rent agreed upon, namely, 11*l.* 10*s.*, was for both conjointly, and each was to be held for the term of one year; but the times of entering upon and quitting the land and the cottage were different, the agreement being that the land should be entered upon at Lady-day, 1827, and the cottage at May-day, 1827, the same to be held till Lady-day, 1828, and May-day, 1828, respectively. The pauper entered upon the land at Lady-day, and the cottage at May-day; he quitted the former on the ensuing Lady-day, having occupied the same for a year, and at May-day quitted the latter, having occupied that for a year, paying the full rent of both cottage and land at two separate payments, namely, the first half-yearly rent after Martinmas, 1827, and the second half-yearly rent about a week before May-day, 1828. No evidence was offered by the appellants as to the value of the land alone or of the house alone. Denman, C. J. "This question depends on the statute 6 Geo. IV. c. 57, which enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both *bonâ fide* rented by such person at and for the sum of 10*l.* a year at the least, for the term of one whole year, nor unless such house or building or land shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.' Now here the tenement did consist of separate and distinct building and land; they were *bonâ fide* rented for 10*l.* The question is, whether it was occupied for one whole year. The house and land were occupied under the yearly hiring, and each of them was for the term of one whole year. The words of the statute are therefore satisfied." Parke, Taunton, and Patteson, Js. concurred. Order of sessions quashed.

Rex v. North Collingham, 1 B. & C. 578; 2 D. & R. 743; (see *ante*, 611.) Upon the second question in this case, namely, whether the pauper gained a settlement when he underlet a part of his tenement, Abbott, C. J., said, "As to the second question, it is to be observed that a different expression is applied to land and to houses. The house is to be *held*, but the land is to be *occupied*: it was probably intended that a party taking lodgers, properly so called, should not be thereby prevented from gaining a settlement. The question

is, did the pauper *hold* the whole dwelling-house? It is said that the lodger held a part distinct from the rest, so that a burglary committed in that part might in an indictment be laid to have been in the dwelling-house of the lodger. I think however that that proposition is not established by the facts stated. It is said that putting the key of the inner door into the hands of the lodger, was the same thing as if there was a brick wall between his and the adjoining room. If indeed it had been stated that the key was delivered to the lodger, for the express purpose of preventing the communication between the different apartments, there would be the more weight in the argument. But the key may have been delivered to him for the purpose of enabling him to enter either way; and if that was the object, then he had not any distinct dwelling-house. I rather infer from the facts stated, that that was the object for which the key was delivered; and if so, then the pauper held the whole house, and it is to be considered as one entire tenement; and in that case a burglary committed in the part occupied by the lodger, must have been laid to have been in the dwelling-house of the pauper. For these reasons I am of opinion that the pauper gained a settlement in North Collingham." *Bayley, J.* "The second point is a question of fact, rather than of law. The sessions might have found it a separate holding, but I see nothing in the facts stated, from which a separation of the part occupied by the lodger from the rest of the house must be necessarily inferred." *Holroyd, J.* "I am of opinion upon the facts stated, that the whole dwelling-house is to be considered as the dwelling-house of the pauper." *Best, J.* "It was probably the intention of the legislature that a settlement should not be gained in such a case as the present; but we are bound to decide according to the words of the statute. As to the second point, I have no doubt that in an indictment for burglary, the room occupied by the lodger might be described as the pauper's dwelling-house. Notwithstanding the underletting, in point of law he still continued the tenant of the whole house." Order of sessions confirmed.

Rex v. Great Bolton, 8 B. & C. 71; 2 M. & R. 227; 1 M. & R. Mag. Ca. 404. Lucy Hall removed from Great Bolton to Little Bolton. Order discharged. Case:—The pauper's mother Mary Hall being a widow, went to reside in Little Bolton in May, 1823, where she hired a house, consisting of six rooms and a cellar, and being a separate and distinct dwelling-house, for a year, and from year to year, at the annual rent of 11*l.*; and she continued to hold such house, and actually paid the said rent for the same, for the space of two years and upwards. Before she went to live in the house, but after she had hired it and put some of her furniture into it, she underlet to one Clough the cellar under the house at 1*s.* 6*d.* per week, and he occupied the cellar during the whole of Mary Hall's tenancy. The cellar was let unfurnished, and Clough occupied nothing but the cellar. The cellar communicated with the street by an outer door, of which Clough kept the key; and at the time Mary Hall took the house the cellar communicated with the room above in the house by means of a step-ladder and a trap-door; but when she went to live in the house she took away the step-ladder, which she placed in one of the higher rooms of the house, and shut the trap-door, expressly for the purpose of preventing any communication between the cellar and the rest of the house. The trap-door was not fastened, except that the furniture of the house was placed upon it, as upon other parts of the room-floor. The trap-door was never used by the cellar tenant, or by Mary Hall. When the cellar was underlet to Clough there was no fire-grate in it, and soon afterwards Clough applied to Mary Hall for a grate to be put up in the cellar. Mary Hall furnished the grate at her own expense, and it remained there until she left the house, when she sold the grate to Clough, who paid her for it. The pauper lived with her mother, as part of her family, in this house during the whole of her tenancy. The question for the opinion of the court is, whether the pauper's mother, on whose settlement that of the pauper depends, gained a settlement in Little Bolton under the 59 Geo. III. c. 50. Lord *Tenterden*, "The safest course is to give effect to the particular words of the enacting clause. Where the legislature uses in the same

Under 59 Geo. 3, c. 50, a settlement was gained by holding for one year a dwelling-house, part of which was let by the week to an under tenant, who had no means of access to the rest of the house.

15. *Occupation.*

It is not necessary that the hiring and occupation under 59 G. 3, should be for the same year.

sentence different words, we must presume that they were used to express different ideas. The words are, 'that the house or building shall be *held* and the *land occupied*.' Here the house was *held* for one whole year, and the pauper's mother gained a settlement in Little Bolton." Order of sessions quashed.

Rex v. Stow, 4 B. & C. 87; 6 D. & R. 110; 3 D. & R. Mag. Ca. 87. Joseph Ashton was removed from Sturton-by-Stow to Stow. Order quashed. Case:—Three weeks after May-day, 1820, the pauper took a house and land in Stow, at the annual rent of 15*l.*, for one year, from the preceding May-day to May-day, 1821; and at May-day, 1821, he took the same again at the same rent for the year then ensuing. The pauper resided in the house, and occupied the land from the time he first hired the same till *five weeks after* May-day, 1821, and paid the whole rent during the time he so occupied the house and land. Abbott, C. J. "I am of opinion that the sessions have in this case mistaken the law. All that the act in question requires for the obtaining a settlement has been complied with. There has been a hiring of a house and land for a whole year, at a rent exceeding 10*l.*, and there has been a *bonâ fide* occupation and payment of rent for more than a year. That satisfies the whole of the act. It has been contended that the legislature must have meant the hiring, occupation, and payment to be for the same year.^(a) If that had been their intention, it would have been easy to say that the occupation and payment should be for *such* term. But as the words of the statute have been complied with, we cannot say that a settlement has not been gained, on the ground of some supposed intention of the legislature." Bayley, J. "Considering the state of the law before the act in question passed, the words of that act, and the decision of this court in *Rex v. North Collingham* (*ante*, 656), I think we are bound to say that a settlement was gained in Stow. Before the passing of the act it was not necessary that a tenement should be hired for any specific period; the mere occupation for forty days of one or more tenements, together of the annual value of 10*l.*, sufficed. Then came the 59 Geo. III. c. 50, requiring that the tenement should consist of a house or land, or both, that it should be hired for a year, occupied for a year, and that the rent should be paid for a year. All those requisites have been literally complied with, and the *Rex v. North Collingham* decided that the taking need not be of one entire tenement; and I collect from that case, that the court did not think it necessary that, where there are several tenements, the holding of all should commence at one and the same time. And this is a reasonable construction of the act; for suppose a man to hire at Michaelmas land for a year at the rate of 9*l.*, and in like manner to hire at each quarter of the year land of the same value, and to occupy the whole, and pay the rent for five years, unless the occupation under different hirings can be connected, it would be difficult to say that he ever occupied a tenement of 10*l.* per annum for one whole year. That surely would be a very unreasonable construction. I am therefore of opinion, that the occupation under the different hirings stated in this case may be connected, and that the pauper thereby gained a settlement in Stow." Holroyd, J. "I think that a settlement was gained by the renting a tenement stated in this case, connected with the other circumstances of occupation and payment of rent. We are required to put a construction on a restrictive act; but even if that were not so, I should think that the words of it have been complied with. If it had been intended that the occupation should be for the same time as the hiring, the legislature would probably have introduced the words *for the said term*. It seems to me that the words 'nor unless' have been used in order to divide the sentence, and to exclude the construction now contended for on behalf of the appellants. The *dicta* as to the decisions on the 8 & 9 Will. III. c. 30, are not applicable to this case; that statute requires that the servant shall be hired for a year, and continue and abide in the *same* service for a whole year; there was, therefore, strong

(a) This is required by the 1 Will. IV. c. 18. See *Rex v. Banbury*, 3 Nev. & M. 292; 1 Ad. & El. 136 (*post*).

ground for supposing that the legislature meant the service which the party was hired to perform, viz., a yearly service. But the statute now before us does not require that the occupation shall be for the *same* term as the hiring." *Littledale, J.* "Upon the strict words of the act I think that a settlement was gained in Stow, but at the same time I cannot but think the meaning of the legislature extremely doubtful." Order of sessions quashed.

Rex v. Tonbridge, 6 B. & C. 88; 9 D. & R. 128; 4 D. & R. Mag. Ca. 245. John Hazell was removed from Tonbridge to Lamberhurst; quashed. Case:—The pauper, about Michaelmas, 1816, took a cottage, situate in Tonbridge, of one Douch, for a year, at the yearly rent and of the value of 8*l.* 10*s.* At Michaelmas, 1817, he made a fresh agreement for the cottage for one year, at the annual rent of 8*l.*, and continued to hold and occupy it from that time until Michaelmas, 1821, paying a rent of 8*l.* per annum only for it from Michaelmas, 1817. At Lady-day, 1821, he took a garden, also situate in Tonbridge, for a year, at the yearly rent and of the value of 2*l.* 2*s.* He agreed with one William Maynard that they should share the expenses and profits arising from the cultivation of the garden. Maynard paid to Hazell half of the rent, but the latter paid the whole rent to the landlord, who was not (to the knowledge of Hazell) aware of the partnership. The garden was thus occupied for a year, until Lady-day, 1822, and the rent paid for the whole year. At Michaelmas, 1821, Hazell having quitted Douch's house, took a house in Tonbridge of one Lawrence for a year, at the yearly rent of 9*l.*, and he occupied it from that time until his removal in 1825, and paid the rent for it during the whole time. The question for the opinion of the court is whether the pauper gained a settlement by renting a tenement, by operation of the statute 59 Geo. III. c. 50. *Cur. ad vult.* Judgment delivered by *Bayley, J.* "This was a settlement question between the parishes of Tonbridge and Lamberhurst, depending on the 59 Geo. III. c. 50. The facts were these:—The pauper was removed to Lamberhurst in 1812, and there was no appeal. In 1816 he took a cottage in Tonbridge at 8*l.* 10*s.* per annum, but in 1817 the rent was reduced to 8*l.* He continued in that cottage till Michaelmas, 1821. At Lady-day preceding (in 1821) he took a garden at 2*l.* 2*s.* a year, but he agreed with one Maynard that the expense and profits should be shared between them. The garden was occupied a year, and the rent paid. At Michaelmas, 1821, when he quitted the house at 8*l.* a year, he entered upon another at the yearly rent of 9*l.*, which he occupied till 1825. So that from Lady-day, 1821, to the Michaelmas following, he had the garden and the 8*l.* house, and from Michaelmas, 1821, to Lady-day, 1822, he had the garden and the 9*l.* house; and it is only from Lady-day, 1821, to Lady-day, 1822, that there is any pretence for saying he had 10*l.* a year. By 59 Geo. III. c. 50 (which operated from 2d July, 1819), a distinction is made between houses and buildings on the one hand, and land on the other; and though this distinction is removed by the 6 Geo. IV. as to settlements subsequent to the period from which that statute operates, it must still be attended to in cases of previous settlements. By the 59 Geo. III. c. 50, it was required, in case of a house or building, that it should be *held* for a year by the person hiring it; in the case of land, that he should *occupy*. In the case of houses and buildings, therefore, so as the tenure subsisted, it was in this respect, before the statute of 6 Geo. IV. c. 57, sufficient; so that under-letting a part of a *house or building* would not have prevented a settlement; and that point was accordingly so decided in *Rex v. North Collingham* (*ante*, 656), which was cited in the argument. But in the case of *lands*, the person hiring was to *occupy* for the year. Did the pauper, then, occupy the garden for the whole year? It is stated in the case, that though the pauper took the garden, it was agreed between him and Maynard that they should share the expense and profit. It is also stated that Maynard paid the pauper half the rent, and that the garden was thus occupied. It is not in terms stated that there was a joint occupation; but as Maynard was entitled to participate in the occupation, we think it must be taken that he did, and if so, the pauper cannot be considered as occupying more than a moiety of the garden. Unless the garden was separately occupied by the

15. Occupation.

The pauper agreed with another that they should share the expense and the profits equally of cultivating some garden ground; the partner paid half the rent to the pauper, but the latter paid the whole to the landlord: Held, that no settlement was gained under the 59 Geo. 3, c. 50.

15. *Occupation.*

Pauper took a house for a year at 10*l*. Having lived there nearly the whole term, he abandoned the premises a few weeks before the year ended, and they were then occupied by another person. It did not appear how that party came in. The pauper paid the whole year's rent. He gained a settlement under 59 Geo. 3, c. 50, by holding the house for a year.

pauper the whole year, no settlement was gained. We are therefore of opinion that there was no settlement in Tonbridge, that the settlement in Lamberhurst remained, and that the order of sessions, which quashed the removal to Lamberhurst, on the ground of a settlement in Tonbridge, cannot be supported." Order of sessions quashed.

Rex v. Stow Bardolph, 1 Bar. & Adol. 219. M. Buck, and his wife and children, were removed from Stow Bardolph to Downham Market. Order quashed. Case:—The pauper, M. Buck, at Old Michaelmas, 1819, hired a house in the parish of Downham Market, of one Jonah Weston, for a year, at the rent of 10*l*. He occupied the house from that time until a few weeks before Old Michaelmas, 1820, when he removed to another house. The house was then occupied by one Mary Palmer. The pauper paid the whole year's rent, and took a receipt. The sessions found that the pauper had, previously to the Michaelmas, entirely abandoned the possession of the house, and stated the question to be, whether the pauper, having entirely given up possession of the house four or five weeks before Michaelmas, and being succeeded by another occupier, yet paying the whole year's rent, could be considered to have held the house for one whole year, within the meaning of the 59 Geo. III. c. 50, so as to gain a settlement in Downham Market. Bayley, J. "This is a plain case. The distinction between land and houses, under 59 Geo. III. c. 50, was laid down in *Rex v. Tonbridge*, (6 B. & C. 88; 9 D. & R. 128; ante, 659). Land was to be occupied; a house might be held only. In the latter case, 'so as the tenure subsisted, it was sufficient.' Can it then be presumed here, that the relation of landlord and tenant was determined? It must be taken to have continued, unless a determination of it be shown. The case finds that the pauper hired this house for a year, and occupied it till a few weeks before Old Michaelmas, when he abandoned the possession, and removed to another residence; that the house was then occupied by another person, and that the pauper paid the whole year's rent. It does not appear how the succeeding occupier came in. The duty of a tenant on quitting possession is to give up the premises to his landlord; it was essential to the appellants' case that there should have been a surrender, but nothing of this kind is stated. The rent is not shown to have been paid before the end of the year, nor does any intervention of the landlord appear previous to that time. *Abandoning* does not determine a tenancy; the tenant held till he should give up to the landlord, and that, according to the case, must be taken to have been at the expiration of the year." *Littledale, J.* "It should have appeared that the holding was put an end to,—not merely that the possession was abandoned. If the pauper had given up the premises, and the landlord, with his assent, had accepted Mary Palmer as tenant, that would have been a surrender by act and operation of law, as in *Thomas v. Cook*, (2 Bar. & Adol. 119). But we are not informed how Palmer came into possession." *Parke, J.* "The statute is not clearly penned, but construing it as other acts and writings are construed, we must suppose a distinction intended between lands and houses; that an occupation of the one for a year is required, but not of the other. In this case, for the purpose of the act, the house was the pauper's during all the year. Unless it could be shown that a regular surrender took place, or that another person was let into possession with the consent of the pauper as tenant (as in *Thomas v. Cook*), we cannot say that his interest ceased until the year was out." Order of sessions quashed.

Rex v. Ditchet, 9 B. & C. 176; 4 Man. & R. 151. Removal of Martha, wife of T. Jerard, from Ditchet to Lyncombe, quashed. Case:—Jerrard rented a tenement in Lyncombe by the year, from Lady-day, 1825, to Lady-day, 1826, at the rent of 15*l*. with liberty to quit on a quarter's notice. After the first month's occupation Jerrard left his wife for seven months. She paid the year's rent, the receipts for which were given as if it had been received from the husband. A few days after Lady-day, 1825, Jerrard let an apartment in the tenement to Gay, at the yearly rent of 8*l*. with liberty to quit on a quarter's notice. Gay occupied till Lady-day, 1826, and paid his rent to that time. Jerrard gave notice at Christmas, 1825, to quit at Lady-day, 1826. The landlord

Since 6 Geo. 4, c. 57, occupation by the wife of the tenant and of a part by a lodger entitles husband to a settlement.

permitted the wife to occupy part of the tenement till Midsummer, 1826, on paying 38s. for the same, till which time she lived there. Jerrard never paid any parochial rates although rated. *Bayley, J.* "The statute 59 Geo. III. c. 50, is repealed by the statute 6 Geo. IV. c. 57. The question therefore in this case is, whether a settlement was or was not obtained under the last-mentioned statute? By the 59 Geo. III. c. 50, a settlement could not be obtained in the case of a house or building, unless such *house or building* were *held*, or in the case of *land*, unless it were *occupied*, and the rent for the same were actually paid for the term of one whole year at the least, *by the person hiring the same*. There was therefore a specific enactment that the house should be *held*, and the land *occupied*, and the rent paid *by the person hiring the same*. The language of the 6 Geo. IV. c. 57, is different. That statute is wholly silent as to the occupation or payment of rent by the person hiring; and it has been decided in *Rex v. Kibworth Harcourt* (*ante*, 653), that according to the true construction of the statute, the payment of rent need not be made by the party hiring. The words, *by the person hiring the same*, are to be considered therefore as struck out of the statute 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or by any other person. The words of the 6 Geo. IV. c. 57, s. 2, are, that the house, or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same, to the amount of 10*l.*, shall be actually paid for the term of one whole year at the least. Here the phrase is varied. The statute says, not that the house or land shall be occupied *by the person hiring the same*, but only that it shall be occupied *under such yearly hiring*. And although it may be difficult to arrive with certainty at the meaning of the legislature, which is not expressed in very intelligible language, I incline to think the true construction of those words is, that it shall be occupied by the person to whom that hiring gives the right of occupation, and that occupation by any other person, to whom that right is communicated either by assigning or underletting, is not an occupation under the yearly hiring within the meaning of the statute. That is my present opinion. If between this time and to-morrow morning I should change that opinion, I will certainly communicate it to the court. My learned brothers think that the words *under such yearly hiring* do not make occupation by the person hiring requisite, but that it is sufficient if either he himself or any other person under him occupy. I think that a party who occupies as an under-tenant, though he may be said in some sense to occupy under the yearly hiring, cannot be said to occupy under the yearly hiring within the meaning of this clause of the act of parliament; because though he does occupy in part under that yearly hiring, he does not *in toto*; he occupies under the yearly hiring and something else. As to the other question, viz. whether the holding before the 22nd of June, when the 6 Geo. IV. c. 57, was passed, and the holding subsequent to that period, can be connected, I am of opinion they may; provided the occupation before the 22nd of June be such as will satisfy the requisites of the 6 Geo. IV. c. 57; and therefore if a party, before the 6 Geo. IV. c. 57, began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite in order to gain a settlement, a settlement will be conferred. There are no words in the 6 Geo. IV. c. 57, which import that the taking shall be subsequent to the time when that statute came into operation. With respect to the *residence* for forty days, I think the case ought to go down to the sessions again, in order that it may be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. The cause of the husband's absence, whether it arose from his own free will, or from compulsion, or from other circumstances, may possibly be material. In *Rex v. St. George, Southwark* (*post*, 672), the husband was incapacitated by law from residing in his own house; for he was in prison during the whole of the time, and had not the power of residing on his own property for forty days." *Littledale, J.* "The principal

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difficulty in this case arises upon the construction of the word 'occupied,' in the statute 6 Geo. IV. c. 57. There is a material difference between a holding and an occupation. A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family. In this case it seems to me that the pauper has been the occupier of the house during the whole period. We have no distinct account how the apartment was let or occupied. In an indictment for housebreaking it might be laid to be the house of the pauper's husband. So in an action for use and occupation, he might properly be described not merely as holding but as occupying the house. In the statute 11 Geo. II. c. 19, s. 14, which gives the action for use and occupation where the agreement is not by deed, a distinction is made between the words held and occupied. That section enacts, 'that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, &c. held or occupied by the defendant, in an action on the case for use and occupation of what was so held or enjoyed.' By the statute of the 43rd of Elizabeth, the rate for the relief of the poor is to be on the occupier. The rate in this case must clearly have been made on the pauper's husband for the whole house though he underlet part. In *Nolan's Poor Laws*, 176, it is laid down that no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is, in the eye of the law, the tenant for the whole, and is rated as the occupier. Then, as in an indictment for housebreaking (committed in the apartment let to Gay), the house might be described as the dwelling-house of the pauper's husband; and as he might be described as the occupier of the house in an action for use and occupation, and would be rateable to the poor as occupier in respect of the whole house, I think he must be considered in point of law as having occupied and resided in this house. It is not necessary in order to make a man an occupier that he should actually sleep or take his meals in a house, or that his family should actually dwell in the whole house; but the law considers him for this purpose an occupier if he hold the whole, and by himself or his family occupy part. I think therefore the pauper's husband may be considered to have occupied the house within the meaning of the 6 Geo. IV. c. 57. It might have been otherwise if he had underlet the whole house and occupied no part. The word occupation as applied to a house undoubtedly implies personal residence. But if a lessee of a house dwell in any part of it, though he let the other part, he in point of law is to be considered as the occupier of the whole. If that be the true construction of the word 'occupied,' the pauper's husband occupied the house; and then the only question is, whether there has been forty days' residence by the pauper's husband? and upon that point there is some doubt. That certainly is essential; for the legislature did not intend by the 6 Geo. IV. c. 57, to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife, and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent. I agree with my brother *Bayley* that the case ought to be sent back to the sessions, in order to have the fact ascertained." *Parke, J.* "I have entertained considerable doubt in this case; but I am inclined to think that a settlement was gained in the parish of Lyncombe and Widcombe. The question turns entirely on the 6 Geo. IV. c. 57. My judgment may have the effect of defeating the intention of the framer of that act. But it is a very safe rule of construction to adhere to the words of an act of parliament in their grammatical and natural sense, unless it appears clearly from the context that they were intended to be used in some other sense. There is a material difference between the statute 6 Geo. IV. c. 57, and the statute 59 Geo. III. c. 50. The last-mentioned statute expressly requires the building to be held, and the land to be occupied, and the rent to be paid, by the person hiring the same.

The statute 6 Geo. IV. c. 57, omits the words 'by the person hiring the same.' It does not require the payment of rent or occupation *by the person hiring the same*, but occupation *under the yearly hiring*. These words may be satisfied by the continuance of the term and occupation by a sub-tenant or assignee during the continuance of that term. It is not necessary to decide in this case whether occupation by an assignee would be sufficient or not. Here there was an occupation by a person whose character is left doubtful. It does not appear by the case whether it was that of a sub-tenant having an entire occupation of one part of the building or that of a lodger. It seems to me there was an occupation by the husband of the pauper under the yearly hiring, provided the premises continued in the occupation of any person entitled under the tenancy created by the yearly hiring. I think we ought to give effect to the words of the act of parliament in their plain natural sense, unless we see clearly from the context that the intention of the legislature was different; but I find nothing in the context to show that that which those words taken in that sense import, was not their intention. I must suppose that the legislature, when they repealed the 59 Geo. III. c. 50, which expressly required an occupation by the person hiring, had some reason for omitting those words in the 6 Geo. IV. c. 57. Possibly that omission may have arisen from inattention on the part of the framer of the act, and it may have been intended to require occupation by the person who took the term. But it seems to me that the words used do not expressly require such occupation, and we must not presume the intention of the legislature, but collect it from the words of the act of parliament. Then if the meaning of the legislature be that which the words used naturally import, a settlement has been gained provided there has been a residence of forty days. As to that the case is ambiguous. I think it ought to be referred again to the sessions for the purpose of having the facts stated one way or the other. If it be found that there was no residence by the husband for forty days, then no settlement will be gained." Case sent back to the sessions.

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Rex v. The Inhabitants of Great Bentley, 10 B. & C. 520. Upon appeal against an order of two justices, whereby J. Peeling, his wife, and children were removed from little Clacton to Great Bentley, the sessions confirmed the order, subject to the opinion of the court of K. B. on the following case:—J. Peeling, the pauper, hired a tenement, consisting of a separate and distinct dwelling-house and a pasture field of two acres in the respondent parish of Little Clacton, the hiring to commence on December 25th, 1826. He engaged to pay for this tenement the rent of 13*l.* 10*s.* a year for the term of two years; but in the latter part of March or the beginning of April, 1827, the pauper sold the grass in the field, from that time till New Michaelmas, to John Townsend for ten guineas, to be mowed or fed by him, as he pleased, and during that time he discontinued to turn his donkey and cow into the field as he had before done, as he did not consider that he could feed the grass after he had sold it to Townsend; and having a quantity of clover which he wished to stack in the field he asked Townsend's leave to stack it there; and having obtained that leave, abated one shilling from a claim he had upon Townsend for labour which he had performed for him, and which Townsend accepted as an acknowledgment for the damage done to the grass by the stack. The pauper sold the grass to Townsend in the same way in the second year, though with some variation in the price. The court of quarter sessions held that during the operation of the pauper's agreements with Townsend he did not occupy the field under his yearly hiring in the manner required by the 6 Geo. IV. c. 57, and therefore that he had not gained a settlement by the hiring of this tenement. *Knox* and *Broderick* argued in support of the order of sessions. *Mirehouse*, *contra*. Lord Tenterden, C. J. "The question in this case turned on the tenement act, 6 Geo. IV. c. 57. Upon consideration we are all of opinion that all that was required to be done by that act has been done in this case, and consequently that the pauper gained a settlement by renting the tenement in question. That statute enacts, that 'no person shall acquire a settlement in any parish or township by, or by reason of settling

By the 6 Geo. 4, c. 57, which repealed the 59 Geo. 3, c. 50, it is enacted, that no person shall acquire a settlement by reason of settling upon any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person at the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least, &c. : Held, per totam curiam, that under that statute a pauper who rented for a year a dwelling-house and land at a rent exceeding 10*l.* per annum, which was

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actually paid, but who underlet the land, gained a settlement.

upon, renting, or paying parochial rates for any tenement, not being his or her own property, unless such tenements shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township at and for the sum of 10*l.* a year at the least, for the term of one whole year.' Here the tenement consisted of a separate and distinct dwelling-house and land: it was *bonâ fide* rented by the pauper in the parish, and at and for a rent exceeding 10*l.* per annum for one whole year. But then the statute continues, 'nor unless such house or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.' The rent for the term of one whole year has been actually paid. The only question is, whether there was an occupation of the whole of the premises hired *under the yearly hiring*? It was objected that the pauper did not occupy the whole of the premises hired under the yearly hiring; that he let off the land, and that this clause of the act of parliament therefore was not satisfied. There is a difference between the language of the statute 6 Geo. IV. c. 57, s. 2, and that of the 59 Geo. III. c. 50. The last-mentioned statute required that the house should be held, and the land occupied, *by the person hiring the same*; but those words 'by the person hiring the same' are omitted in the 6 Geo. IV. c. 57. The legislature when they passed that statute must have had in their minds the very act (59 Geo. III. c. 50,) which they were repealing. We cannot therefore but consider that those words were left out by design. Then the only question is, whether the whole of the premises were occupied under the yearly hiring? It is clear that they were. That being so, every condition that was required by the terms of the act of parliament has been complied with, and the pauper has gained a settlement. We think it much the safer course to adhere to the words of the statute construed in their ordinary import, than to enter into any enquiry as to the supposed intention of the persons who framed it. The order of sessions must therefore be quashed." Order of sessions quashed.

To give a settlement by renting a tenement since 1 Will. 4, c. 18, there must be an occupation in fact of the whole dwelling-house or building of which the tenement consists by the party hiring the same.

Rex v. St. Nicholas, Rochester, 5 Bar. & Adol. 219; 3 Nev. & Man. 21, S. C. Appeal against an order, whereby C. Tress and family were removed from St. Margaret to St. Nicholas, both in the city of Rochester. Order confirmed. Case:—The pauper, C. Tress, on the 3d of October, 1831, took a lease for a year of a house in the appellant parish, at the rent of 40*l.* per annum. Under this lease he entered into possession of the house, and remained there with his family until the 3d day of October in the following year; he paid the rent for half the year, and fulfilled all the conditions of the statutes 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, unless the court should be of opinion, that under the following circumstances the house was not occupied by the pauper within the meaning of the 1 Will. IV. c. 18. The house in question was a separate and distinct dwelling-house, consisting of three floors. When the pauper had been in possession of the premises about three months, viz. on the 4th of January, 1832, he underlet the two upper floors, unfurnished, to one Boucher; and during all the time Boucher staid in the house the pauper occupied the ground floor only, by himself and his family. Boucher's agreement with the pauper was, that he should take these two floors of the pauper by the quarter, at the yearly rent of 22*l.*; that Boucher should have the use of a wash-house on the ground floor in common with the pauper, and that the pauper should have a sleeping room in the upper floor for one of his children, whenever Boucher did not want it for his own family. Boucher entered into possession of the two floors on the 4th of January, furnished the rooms himself, staid in them upwards of two quarters, and paid the rent agreed on. During Boucher's residence there he had the joint use of the wash-house, and the pauper's child, by the permission of Boucher, occupied the sleeping room in the upper floor about a fortnight or three weeks according to the agreement. The ground floor was not separated from the upper floors by any door or partition, and both the pauper and Boucher, during Boucher's residence in the house, had common access to it by the front and back doors, and each took the key of the front door whenever he had need of it, without asking permission of the other. *Denman*,

C. J. "The meaning of the word *occupied* may vary according to the occasion or the subject-matter. The meaning, therefore, which it has received in considering what occupation was necessary to constitute a mansion-house in which burglary might be committed, or to give a right of voting, or to make a party rateable to the relief of the poor, is no test of its meaning in this particular case. A new distinction is introduced by the statute 1 Will. IV. c. 18. Under the former statute, 6 Geo. IV. c. 57, a constructive occupation was sufficient. This statute requires an occupation in fact. It recites the former act, and that doubts had arisen with respect to the intentions of the legislature concerning the occupation of *such* house, building, or land, by the person hiring the same, and enacts, that 'no person shall acquire a settlement in any parish by reason of *such* yearly hiring of a dwelling-house or building, or of land, or of both, *as in the said act expressed*, unless *such* house or building, or land, shall be *actually* occupied under such yearly hiring by the person hiring the same.' A constructive occupation will not satisfy these words. The statute requires in terms an actual occupation. Here it appears that the pauper underlet the two upper floors, and occupied the ground floor himself. It is impossible to say, in the face of the statute, that the pauper who occupied the ground floor only actually occupied the whole house. The consequences resulting from this statute are remarkable; a person of whatever degree of respectability who hires a house by the year at a high rent, and underlets a part of it, will be prevented from acquiring a settlement by renting. But whatever the consequences may be, I must say that the words which the legislature has used prevent a settlement being gained in this case." *Littledale, J.* "What I am reported to have said in *Rex v. Ditchet* (9 B. & C. 176, *ante*, 660,) as to the meaning of the word *occupation*, applies to a constructive occupation only, which was sufficient to satisfy the statute that governed that case. The statute 1 Will. IV. c. 18, referring to the 6 Geo. IV. c. 57, enacts, that no person shall acquire a settlement by such yearly hiring of a dwelling-house, &c. unless such house, &c. shall be actually occupied under such yearly hiring by the person hiring the same. That evidently means an occupation in fact. But in this case another party, not the person hiring, had a right to occupy two-thirds of the premises; there was not, therefore, an occupation in fact of the whole house by the pauper, for he could not in an action of trespass justify going into the rooms which he had let; he had parted with all right to them from quarter to quarter. The word *actually* must have effect given to it; and giving the word full effect, it must mean occupation in fact, as distinguished from a constructive occupation. To the question I put during the argument, whether it would make any difference if the underletting were for a less period than a year, the proper answer has been given. If there be not an actual occupation of the whole house, within the statute, when part of it is let for a year, neither would there be when part of it is let for a week. It may be said, that deducting 22*l.*, which the under-tenant in this case was to pay, from the whole rent of 40*l.*, that part of the premises which the pauper retained was still rented at 18*l.*; but this cannot be taken into consideration. There must be an actual occupation of the whole house. The consequence undoubtedly will be, that all persons who let lodgings will be prevented from gaining a settlement by renting a tenement of any value. But it is better to adhere to the plain words of a statute than to depart from them on the ground of some supposed inconvenience." *Taunton, J.* "It is a safe rule of construction to adhere on all occasions to the language of a statute. It has been often much lamented that the judges have departed from the plain and literal construction of the statutes relating to the settlement of the poor. On the language of this statute, which was made to remove doubts arising as to occupation, I have no hesitation in saying, that it requires an occupation of the whole house by the party hiring. The word '*such*,' which comes before the words '*yearly hiring*,' is very material, because, by reference to the recited statute, it must be taken to mean the yearly hiring of a separate and distinct dwelling-house or building, or land, or both. There must be an occupation in fact of a separate and distinct dwelling-house, and not only under the yearly hiring,

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but also by the person hiring the same. Now, were all these conditions performed here? The pauper took a distinct and separate dwelling-house at 40*l.* a year, but divided the occupation of that dwelling-house between himself and Boucher. The latter probably had the larger part; but whether that was so or not is immaterial. We cannot say that the pauper actually occupied a separate and distinct dwelling-house under the yearly hiring, when there was an exclusive occupation of part by another person. I am therefore satisfied that there was not an actual occupation within the meaning of this statute. The order of sessions must be quashed." *Patteson, J.* "I am of opinion, on the plain words of this statute, that no settlement was gained by the pauper. The words '*actually occupied*' put an end to all question, and the case must be considered as if the word '*actually*' were incorporated in the former statute, which is not repealed by the 1 Will. IV. c. 18. Then reading the 6 Geo. IV. c. 57, as if that word as well as the words '*by the party hiring the same*,' were incorporated in it, it will prevent any one from acquiring a settlement by renting a tenement, unless such house or building (that is, the separate and distinct dwelling-house, or building, or land, or both, of which the tenement is required to consist,) shall be actually occupied under the yearly hiring, by the party hiring the same, for the term of one whole year. Now in this case it is clear that the whole dwelling-house was not actually occupied by the party hiring the same; part of it was occupied by another person. The decisions on the liability of persons to be rated, and their rights of voting, as occupiers, which have been referred to, are not affected by this case." Order of sessions quashed.

No settlement can be gained since the passing of 1 Will. IV. c. 18, by the renting and occupation of a tenement by a party who allows an under-tenant to have the exclusive occupation of rooms in the tenement, for however short a period such occupation may continue, and however small may be the sum paid in consideration of it.

Seemle, That a letting of rooms by an innkeeper to his guests, is not such an under-letting as would defeat the settlement.

The 1st sect. of 1 Will. IV. c. 18, (though prospective only) applies to cases in which the occupation had commenced but was not complete at the time of passing of the act.

Seemle, That a discharge of rent by means of a distress upon the goods of the tenant is a sufficient payment of rent by the party hiring the tenement within 1 Will. IV. c. 18, s. 1.

Rex v. St. Nicholas, Colchester, 4 Nev. & Man. 422; 2 Adol. & Ellis, 599, S. C. Appeal against an order of removal of S. Sparrow and family from St. James to St. Nicholas, Colchester. Order confirmed. Case:—By an agreement in writing, dated 24th March, 1831, the pauper and one Hutchinson hired a messuage at St. Nicholas for two years, at the rent of 60*l.*, payable half-yearly. Hutchinson was included in the agreement merely to guarantee the payment of the rent, the pauper only being intended to occupy the premises. 25th March, the keys were delivered to the pauper. 7th November, a distress was put in for the half-year's rent which had become due at Michaelmas, 1831, and the pauper's goods were sold under the distress by the bailiff, who, out of the proceeds, paid 30*l.* for the rent to the landlord who had employed him, and paid over the remainder, after deducting the costs of the distress, to the pauper. At Lady-day, 1832, the pauper gave up possession, in pursuance of an agreement made with Hutchinson, under which the latter took exclusively upon him the liability to pay the arrear of rent due from the pauper. During the year commencing Lady-day, 1831, and expiring Lady-day, 1832, three rooms in the said messuage were underlet by the pauper to Mr. D. W. Harvey, who had the exclusive occupation of them for three weeks, for which he paid 8*l.* The question is, whether the pauper gained a settlement in St. Nicholas or not. If he did, the order of sessions is to be confirmed; if not, the order to be quashed. Lord Denman, C. J. "This is in truth a question whether *Rex v. St. Nicholas, Rochester* (*ante*, 664), was well decided; for the attempt which has been made to distinguish that case from the present appears to me to fail. *Rex v. St. Nicholas, Rochester*, was decided after full argument, and upon great consideration, by my brothers and myself. At the same time, if there had been anything like a reasonable doubt raised as to the law having been improperly applied on that occasion, I am quite sure every one of us would have been willing to give the greatest attention to every argument that could be brought to show us that we were wrong. I recollect that upon the former occasion every judge who gave an opinion felt that the consequences were such as the legislature had not contemplated, and such as might involve some inconveniences. But we found the words of the statute too strong to grapple with. I am ready to declare that where I find the words of a statute perfectly clear I shall adhere to those words, and shall not allow myself to be diverted from the application of them by any supposed consequences of one kind or the other, as to which courts of justice are very often much deceived. The words of the statute

(which came into operation on the 30th of March,) are these: 'that from and after the passing of this act no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said (recited) act expressed, unless such house or building or land shall be *actually* occupied under such yearly hiring in the same parish or township, *by the person hiring the same*, for the term of one whole year at the least.' The fact is found in this case, that during the year commencing at Lady-day, 1831, and expiring at Lady-day, 1832, several rooms were underlet by the pauper to Mr. Harvey, who had the *exclusive occupation* of them for three weeks, for which he had paid 8*l.* I find that this very case was contemplated by one of my brothers in the decision of *Rex v. St. Nicholas, Rochester*; and it was admitted that if *for any period* another person had the exclusive occupation of any part of the house, that would defeat the settlement; and it seems to me we should frustrate the object of the act if we said that under such circumstances the pauper would gain a settlement. Some difficulty is supposed to be raised by the case of innkeepers. I cannot say that I feel the difficulty, for there is no analogy between the occupation of a room by a guest, and the letting out to a person the exclusive occupation of a part of the house. The occupation in the former case is that of the innkeeper, who has a general control over the whole house, and who, in fact, occupies by means of his guest. I do not think that any doubt can be raised on that subject; nor do I think that any great inconvenience can result from any of the consequences which have been suggested. *Rex v. St. Nicholas, Rochester*, however, having been fully considered, and the words of the act completely warranting that decision, I think we are bound to say that in this case also no settlement was gained." *Littledale, J.* "I see no reason to depart from the opinion I gave in *Rex v. St. Nicholas, Rochester*; and I think that we are bound by that decision, and that this is not such an occupation as falls within the meaning of the act of parliament. Then the only question is, whether the year having commenced prior to the passing of the act, the inchoate settlement can be affected by it? Now it appears to me that the words of the act being 'that no settlement shall be gained from and after the passing of the act,' which was the 30th of March, it clearly does apply to this case." *Williams, J.* "I am of the same opinion. One of the reasons which induces me to abide by the decision in *Rex v. St. Nicholas, Rochester*, is, that I am quite satisfied of the truth of that which has been often said by learned judges, who have very well understood this subject, that it is as important, especially in cases of this sort, to abide by the rule of law when ascertained, as it is to determine the rule originally. Unless, therefore, I saw the clearest ground for doubting the correctness of the decision in *Rex v. St. Nicholas, Rochester*, I should certainly give my assent to that decision. It appears to me that it is perfectly consistent with the principles and objects of the acts which have been passed upon this subject. The 6 Geo. IV. c. 57, was introduced in consequence of the very expensive litigation occasioned by the then state of the law; and, in order to remedy this evil, that act confined the legal settlement by renting a tenement, by enacting that no person should acquire a settlement in any parish, &c. by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his own property, unless such tenement should consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish, &c. at 10*l.* a year for one whole year; nor unless such house, &c. should be *occupied* under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid, for one whole year at the least. That at once got rid of much of the vexatious litigation which arose on the subject. After that act came the one upon which this question depends, (1 Will. IV. c. 18,) which is expressly stated to be 'An Act to explain and amend an Act of the Sixth of his late Majesty, as far as regards the Settlement of the Poor by the Renting and Occupation of Tenements.' Now in what respect does it explain and amend it? It explains and amends it by still further abridging and curtailing the power of gaining settlements by renting a tene-

15. *Occupation.*

ment, in conformity with the principles of the former act; and it accordingly says, that 'no settlement shall be gained unless the house, &c. shall be *actually* occupied under such yearly hiring *by the person hiring the same* for the term of one whole year at the least.' It appears to me that the construction which was put upon those words by the court in *Rex v. St. Nicholas, Rochester*, is the true and right construction. It has been said that this act ought not to have a retrospective operation. It is observable that the act does not affect the *contract*, but relates expressly to the *occupation*. It declares that after the passing of that act no settlement shall be gained unless an occupation of a particular sort shall take place. If the act had required a *contract* of a specific nature, an inchoate settlement by reason of an occupation under a contract valid at the time when it was made, would not have been affected by this. This case is, however, totally different. I therefore am of opinion, that those words 'actually occupied,' &c. which are studiously introduced into this statute, must point to an entire exclusive occupation; and, if it does, we cannot enter into the question of degree—whether the under-letting be of 10*l.* a year, or 5*l.*, or 50*s.* If there be a clear under-letting by the party of any portion of the house, for however short a period of time, and for however small a sum, it seems to me that it cannot be said that there was an *actual* occupation of a separate and distinct dwelling-house by the party hiring the same. I should not have said so much upon this case if I had belonged to the court at the time of the former decision." Order of session quashed.

In *Rex v. St. Giles in the Fields*, Hil. T. 1836, MS. the pauper let a bed in a room of his house for one night, reserving the right of entering the room and putting another lodger into the same bed: Held, that this was an occupation by the pauper.

What a holding under the hiring.

Rex v. Kibworth Harcourt, 7 B. & C. 790; 1 Man. & R. 691. (See the case, ante, 653.) Bayley, J. "I also think that the pauper occupied the premises for one whole year under that hiring, for nothing that was done by Waterfield could have the effect of altering the original tenancy created between the pauper and the owner of the premises. The pauper remained tenant under the original taking, and the landlord ought to have distrained on him for the 10*l.* if it had been in arrear."

During the year the pauper, but not his family, was removed by an order. He returned the same day: Held, sufficient occupation under 59 Geo. III.

Rex v. Barham, 8 B. & C. 99. Welch was removed from Barham to Dover. Order quashed. Case:—The pauper, on 6th April, 1823, hired a house in Dover for a year, of the value and rent of 12*l.* per annum, payable monthly. In January, 1824, the pauper became chargeable, and was by an order directed, with his family, to be removed to Barham. He *alone* was removed, and an overseer of Barham received him, gave him money, and directed him to return to Dover. He returned the same day to his house, and occupied it under the original contract till Michaelmas, 1824; when, in consequence of threats by the overseer of Dover to send him to gaol for coming back, he agreed with his landlord to take the house by the week. At Michaelmas, 1824, the pauper owed some rent. No final settlement took place till June, 1825, when a distress having been put in, the pauper paid the rent, and left the house which he had occupied first under the yearly and then under the weekly hiring uninterruptedly since April, 1823. The pauper paid his rent on account as it suited him, part in meat (being a butcher) and part in money, but had no regular settlement till he left the house. Barham did not appeal against the order in January, 1824. The sessions thought that the pauper gained no settlement by the occupation of the house. C. a. v. Judgment by Lord Tenterden, "The question depends on the 59 Geo. III. c. 50. [He then read it.] The language of this enactment is very peculiar. No person is to acquire a settlement by reason of dwelling forty days in any tenement, unless such tenement shall consist of a house (as it does in the present case) *bonâ fide* hired by such person at 10*l.* a year, for the term of one whole year; nor unless such house shall be held and the rent for the same paid for the term of one whole year at the least. It should seem, therefore, that if a pauper resides for forty days upon a tenement, and the other requisites of the act have been complied with, he gains a

settlement. Now here the pauper resided in the house more than forty days, both before and after the removal, and all that the act requires in other respects was complied with; the house was taken for a year, held upwards of that period, and the rent paid. It has been contended, that the effect of the order of removal was to prevent the settlement only; all that the act requires has been complied with after that order was made. If the effect of the order had been to compel the pauper to abandon his tenement, it would make a difference. But he was absent from his home not even a day, and his family were never removed at all. It is admitted that *Rex v. Fillongley* (*ante*, 632,) has decided that the removal did not put an end to the contract between the landlord and tenant; and under all the circumstances we think it safer to say that a settlement was gained under 59 Geo. III. by the residence before and after the removal. [His lordship then adverted to the supposed offence of the pauper in returning after removal, for which see *post*, and concluded.] Our decision may, perhaps, in this particular case, operate to defeat the object of 59 Geo. III.; but it is better to abide by the consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature." Order of sessions quashed.

15. Occupation.

16. THE WHOLE TENEMENT NEED NOT BE IN ONE PARISH, UNDER 13 & 14 CAR. II.

16. The whole Tenement need not be in one Parish, under 13 & 14 Car. II.

As the renting of a tenement of the prescribed annual value was all that was required, the courts held, that if a person rented several different tenements, making together the required amount, it followed, that if these several tenements were situated in different parishes that would not defeat the settlement, which would in such case be acquired in that parish in which the person resided.

South Sydenham v. Lamerton, 1 *Stra.* 57. A person rented a tenement of 10*l.* a year, being one entire tenement, but lying in two parishes. The question was, whether this gained a settlement. *Parker, C. J.* "The quantity of rent is not material, but the value of the land. A tenant often pays a fine, and thereby lowers the rent, and yet the land is of equal value. And if a man should out of kindness settle another in a tenement of 10*l.* per annum value, reserving no rent, that will not alter the case. The only difficulty is that there is not in this case 10*l.* per annum in one single parish. As to that, I am of opinion, that if such a person as this should take a tenement of 8*l.* per annum in one parish, and another of 3*l.* per annum in a different parish, that would not gain him a settlement in either; but if the tenement be entire, and the house in one parish, as this case is, and part of the land in another, yet this may properly be called a tenement of 10*l.* per annum in that parish where the house is. Two distinct tenements, in two parishes, making together 10*l.* per annum, will give no settlement; but it seems to me to be otherwise where the tenement is entire." *Eyre and Pratt, Js.* accordant. [But see *infra*.]

An entire tenement lying part in one parish and part in another will gain a settlement.

Elsted v. Hollibourne, 2 *Sess. Ca.* 130; 2 *Stra.* 849. A person rented a farm-house and lands at 12*l.* 10*s.* a year, which house and land lay contiguous and had been usually letten together and occupied by the same person; but the house and part of the land, together amounting to 9*l.* a year, lay in one parish, and 3*l.* 10*s.* in another parish. This was held to be a settlement, on the authority of *South Sydenham v. Lamerton*, (1 *Stra.* 57, *supra*.)

Same point.

Rex v. Sandwich, Burr. S. C. 44; 2 *Bott*, 107. A person rented a house in Studland at 30*s.* a year. After he had lived in it about two years he took lands in Langton of 12*l.* a year, on which there was no house, and occupied the lands two years; all which time he inhabited in and rented also the house in Studland. By the court: "It hath been a question, whether two distinct tenements taken at different times (where neither of them alone amounted to 10*l.* a year in value) should make a settlement? But it is now settled that it does: and it is the same thing, whether the takings were distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives;

Different tenements, lying in different parishes, held under different takings, would formerly confer a settlement.

16. *The whole Tenement need not be in one Parish.* (*Rex v. Fritwell, ante, 630.*) The ground of these resolutions is the ability to rent a tenement of such a value; which excludes the presumption of his being likely to become chargeable to the parish.”

Same point.

St. Lawrence v. St. Maurice, Winchester, Burr. S. C. 588; 2 Bott, 169. R. Gradidge rented a tenement of H. Warne, in Hursley, for a year from Lady-day at 3*l.* 10*s.* a year, but resided therein five or six weeks only and then quitted it and tendered the key to Warne which Warne refused to accept, whereupon Gradidge left it with a neighbour before Midsummer-day then next for Warne to take it when he thought proper. On Midsummer-day, Gradidge took a tenement in St. Maurice at 9*l.* a year; and on the same day entered into possession, and resided thereon above forty days, before the key in Hursley was received by Warne, who did not accept it till the 16th of August following. But by the court: “Here is a contract for a year in Hursley not dissolved; nor could it be dissolved; the landlord refused to accept the key; and he did not receive it at last till the middle of August, which was more than forty days after hiring the second tenement.”

17. *In what Parish the Tenement must be.*

17. IN WHAT PARISH THE TENEMENT MUST BE, UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57, and 1 WILL. IV. c. 18.

Among the several important alterations made by the above statutes, is to be noticed that by which a person can no longer acquire a settlement by renting several small tenements in *different* parishes, making together a total of sufficient annual value. This settlement can now only be acquired in respect of the renting in the same parish in which the settlement is claimed.

By 59 Geo. III. c. 50 (*ante, 583*), the whole of such land shall be situate within the same parish or township as the house, wherein the person hiring such land shall dwell and inhabit. The 6 Geo. IV. c. 57 (*ante, 584*), requires that the tenement shall consist of a dwelling-house or land, or both, rented by such person in such parish or township. The 1 Will. IV. c. 18 (*ante, 584*), requires that the tenement “shall be actually occupied in the same parish or township.” But it is not necessary that the whole of the tenement should be taken at one time.

18. *Who may acquire this Settlement.*

18. WHO MAY ACQUIRE THIS SETTLEMENT.

It would probably be difficult to say who may *not* gain this kind of settlement; of course, every person capable of entering into a contract for the renting of a house or land, is competent to acquire this right by such means; and even where, from the peculiar condition of the individual, it may be doubtful whether he is of ability to contract, yet if he actually hire a house or land and continue in the enjoyment of the property the requisite length of time it will be sufficient.

A foreigner may gain a settlement by renting a tenement.

Rex v. Eastbourne, 4 East, 103. Ann Borchert and her children were removed from Seaford to Eastbourne. Order confirmed. Case:—Ann B.’s maiden settlement was in Eastbourne; she married J. B., a German, by whom she had the children mentioned in the order. J. B. was, at the time of the removal, resident in a house at Seaford of above the value of 10*l.*, exercising therein the trade of a baker. His trade declined at Seaford, and he thereupon thought he could exercise it with more advantage at Eastbourne. The wife and children thereupon became chargeable, and were removed as above. The husband acquiesced in every thing which took place with regard to the removal; accompanied them to Eastbourne, and afterwards continued to reside there with them. Lord Ellenborough, C. J. “This man was not an alien enemy, but a German by birth; an alien amy; and as such, though he may not take a lease of a dwelling-house or shop, yet he may occupy a tenement of 10*l.* a year, and carry on his trade there like any other person. (a) Then he has that interest which may enable him to gain a settlement by the provision of the legislature.” Order quashed.

(a) 1 *Saunders’ Rep. by Patteson and Williams*, 6 & 7, note 1.

Rex v. Brighthelmstone, 1 B. & Ald. 270. W. Lancaster was removed from Gloucester to Brighthelmstone. The pauper had been serjeant in the militia, which lay in barracks at Brighthelmstone, and performed all the duties of his situation as serjeant, and during that time had taken a tenement there of the value of 10*l.* a year or more, in which he had resided with his family for more than forty days. Lord *Ellenborough*, C. J. "In this case, it seems to me, that the sessions have drawn the right conclusion. It is contended that the party here had no intention of coming to settle at Brighthelmstone; that is not correct; certainly he had the intention of settling there, subject, however, to the power of those who directed his movements. The case states that he himself took the tenement as a lodging for himself and his family. Now suppose an action then to have been brought against him for non-payment of rent, he clearly could not set up as a defence, that he was not the tenant of the premises; then if he, as a tenant, occupied this house of the yearly value of 10*l.* and upwards, he was, during his occupation, irremovable, and that having continued for forty days, he has gained a settlement. But it is said the mutiny act prevents a soldier from gaining a settlement; that act, however, contains no such express provision: the clause enabling every soldier to be examined as to his settlement, does not disqualify him from obtaining a new one. The case of hiring and service is quite distinguishable from this; that proceeds on the ground of a person's not being permitted to contract two relations inconsistent with each other. In order to gain a settlement by hiring and service, he must engage to serve at all events for a year; now a soldier has not the capacity to render such service, for an order from the war office may at any time intervene and take him from his master's controul. The case of taking a tenement is quite different, he does not there engage to reside in it for any definite period, and if he does actually reside for forty days it is sufficient. If not, it would equally follow, that supposing an estate to have devolved upon him by act of law, or that he had made a purchase to the amount of 30*l.*, still no settlement would be gained by him." Order of sessions confirmed.

18. Who may acquire this Settlement.

So a soldier, whilst on duty, may gain this settlement.

19. RESIDENCE UNDER 13 & 14 CAR. II. c. 12.

19. Residence, &c.

Residence for forty days is sufficient; and the law in this respect is not altered by the recent statutes.

Rex v. Dilwyn, Burr. S. C. 54. William Smith, the pauper, agreed for a farm in Eardisland, to hold from Candlemas, at 44*l.* yearly rent; and in April following he sowed about fifteen acres of the land with grain; in May following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized for rent due to a former landlord. Smith then came to a new agreement with his landlord in Eardisland and agreed to quit that farm, and to continue in the farm-house and garden, and to have a small parcel of pasture with it, at the rent of 3*l.* 10*s.*, and he continued thereupon in Eardisland till Michaelmas following. By Lord *Hardwicke*, C. J. "There was no inhabitancy for forty days in Eardisland under the lease of 44*l.*; and, therefore, there can be no settlement gained under it. And the next agreement with his landlord in Eardisland was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished."

Forty days' residence upon a tenement of ten pounds yearly value is necessary.

Rex v. Caversham (see ante, 605), where the pauper rented a stall in a market, to which he had access only on two days in the week, and rented it from 1st of November, 1817, to the 4th of March, 1818, the court held that as he did not occupy it for more than thirty-eight days, he gained no settlement.

Rex v. Llanbedergoch, 7 T. R. 105. Order of removal of the pauper from Llanbedergoch to Pentraeth quashed. Case:—The pauper rented a tenement in Lleckylehod, called Peurhyw, of Griffith, for the year 1795. In May, 1795, he received notice to quit at All Saints following. The pauper said he had no place to go to, and if he was compelled to quit he would take down a barn he had built upon the farm. Griffith then said, suppose we exchange, you shall go to Weyû Emâd, a tenement in Llanbedergoch that

If a person be forcibly removed from his tenement within forty days, it prevents his settlement.

19. *Residence.* Griffith farmed of Pritchard, at the rent of 10*l.* 10*s.* a year, to which the pauper agreed, and promised not to take down the barn. It was agreed that they were not to mention the matter, lest the respondents should hear of it, and prevent the pauper getting into possession of the farm at Weyû Emâd. On the 16th November, 1795, he removed to Weyû Emâd, but did not remove his furniture there, lest the respondents should see him, he having been informed if he got into possession and slept in the house one night he could not be turned out. The pauper resided twenty-nine days on the premises, when Pritchard, aided by some of the parishioners and overseers of Llanbedergoch, forcibly removed him and his family from Weyû Emâd, and thereby prevented him residing there forty days, and he has ever since been forcibly kept out of the premises. Lord Kenyon, C. J. "In order to gain a settlement by living upon a tenement of 10*l.* a year, it is absolutely necessary that the party should reside there for forty days; with regard to the fraud, where a case is pregnant with circumstances of fraud, the court have repeatedly said they cannot infer fraud; that fraud is a fact to be expressly stated." Order of sessions quashed. (See *Rex v. Fillongley*, p. 632.)

In case of fraud it might be otherwise.

If a person be arrested and carried to prison in a parish different from that in which his tenement is, before he has completed a residence of forty days, he gains no settlement, though his family reside for seven weeks.

Rex v. St. George the Martyr, Southwark, 7 *T. R.* 466. Order for removal of Mary, wife of J. Lord, from St. George the Martyr to St. Martin in the Fields, quashed. Case:—J. Lord took the first floor of a house in St. Martin's at 15*l.* per annum, the rent to be paid quarterly; he went into possession on the 17th March, and on 22nd March he was arrested and carried to the Marshalsea prison in St. George's, but his family continued to reside in the house in St. Martin's parish until the 6th of May following, being seven weeks, the husband remaining all the time in the Marshalsea prison, when his wife and children went to him there, and he gave up possession of the house in St. Martin's, and the landlord took part of his furniture for seven week's rent. The question was, whether the husband gained a settlement in St. Martin's. Lord Kenyon, C. J. said, "that no settlement could be gained by a residence on a tenement for a shorter period than forty days; and though in *Rex v. Leeds* (1 *Bla. Rep.* 466, *post.*) it was only decided that the justices ought not to have removed the pauper from Blackfordly during the continuance of his lease, the court added that 'if his lease at Blackfordly had been at an end, his last forty days' residence at Leeds might have borne a different consideration;' evidently intimating an opinion that forty days' residence is necessary to give a settlement." Order of sessions confirmed.

Absence on business, but family continuing, may constitute residence.

Rex v. Ditchet, 9 *B. & C.* 183; 4 *Man. & R.* 151. (See case, *ante*, 660.) Bayley, J. said, "with respect to the residence for forty days, the case ought to go to the sessions again, in order that it might be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. The cause of the husband's absence, whether it arose from his own free will or compulsion, or from other circumstances, may possibly be material. In *Rex v. St. George's, Southwark* (*supra*), the husband was incapacitated by law from residing in his own house, for he was in prison during the whole time, and had not the power of residing on his own property for forty days." Littledale, J. "There is some doubt whether there has been forty days' residence by the pauper's husband. That certainly is essential, for the legislature did not intend, by 6 Geo. IV. c. 57, to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent." Parke, J. agreed that the case must be sent back, and added, "if it be found that there was no residence by the husband for forty days, then no settlement will be gained."

Residence for thirty-three days by a widow, on a tenement of twenty pounds a year, cannot be coupled with a residence on

Rex v. South Lynn, 5 *T. R.* 664. Order of removal of the children of Ann Howard, widow, from South Lynn to East Bilney, quashed. Case:—C. Howard, the father of the paupers, on the 23rd October, 1792, being then and some time before in possession of a cottage and land in Wiggshall, at the yearly rent of 2*l.* 12*s.* 6*d.*, hired a house in South Lynn at the yearly rent of 9*l.*, and paid 10*s.* 6*d.* in part of the rent, and on the following day he

and his wife and children entered into possession, and resided thereon till his death on the 8th November, 1792, still keeping possession of the cottage and land in Wiggenhall. C. Howard died intestate, and no letters of administration have been granted to any person, but the widow kept possession of and occupied the house and cottage in South Lynn and Wiggenhall, but she and her children resided in South Lynn until 11th December, 1792, and on her quitting the house at South Lynn, she paid the landlord 12s., which, with the money paid him before by her husband, was for half a quarter's rent. After this she remained in possession of the cottage in Wiggenhall. By Lord Kenyon, C. J.: "If we were to decide on the express words of the act of parliament, we should overturn ninety-nine cases out of a hundred that have been determined on this statute. If a mere residence on a tenement for forty days irremovable, were sufficient to give a settlement, every lodger and every servant residing for that length of time would then acquire a settlement; but *in order to gain a settlement by residing on a tenement of the yearly value of 10l., the party must stand in the relation of tenant to the property for forty days.* Here there was an inchoate right in the husband, and afterwards in the widow, which, if completed by a full residence of forty days, in either case would have been sufficient; but that one necessary act, residence for forty days, by the same tenant to the property, was wanting. The husband, after residing sixteen days on this estate, died, and then the wife resided on it; but what privity was there between husband and wife as to this property? It appears that she did not take out letters of administration, so as to give her a settlement by residing on her own for forty days, nor did she reside on the estate for that time as tenant of the premises; and indeed she was not solely entitled to administration. *Rex v. Netherseal* (*ante*, 628) is different from the present, because there the estate was bequeathed to the widow, whose second husband lived forty days upon it; but here there was no privity of contract or of interest whatever between the pauper and her late husband, and we cannot connect the residence of the husband as tenant with the residence of the widow as tenant, so as to complete the forty days' residence by both. Though this case is new in specie, it is not new in principle; and upon the principles established in former cases, I am of opinion that the widow did not acquire any settlement in South Lynn." The other judges concurred. Order of sessions quashed.

St. Margaret's, Westminster, v. Ludgate, 2 Barnard. 76; 2 Bott, 127. Removal of Elizabeth Conyers from St. Margaret's to Ludgate. Case:—J. Conyers, father of Elizabeth, rented a house in Ludgate of 25l. a year, and paid to the rates of the church and poor; but he was a prisoner in the Fleet at the time he did so. In this case he was in the custody of the law, and in no capacity of gaining a settlement elsewhere; though occasionally absent, yet he might be looked upon as virtually resident in Ludgate, which was the place where he came to settle. (a)

Rex v. Topcroft, Cald. 478; 2 Bott, 221. The pauper rented a farm in Kempnell at 30l. a year, and resided on it from Lady-day, 1779, till Christmas, 1781, when he went with his wife to reside with his son-in-law at Topcroft, taking with him all his furniture and the stock remaining on his farm at Kempnell; he resided with his son-in-law at Topcroft upwards of forty days before he delivered up the possession of the farm in Kempnell, but he did not hire or occupy any land or tenement whatever in Topcroft. *Rex v. Llanverras* (*ante*, 654) was cited to show that the residence must be in the parish where the tenement or some part of it lies; and of this opinion was the court. And Lord Mansfield, C. J., said, "Even if residence in one parish and occupation in another were sufficient, here is no such occupation, for he had run away and left his tenement." Both orders quashed.

Rex v. Knighton, 2 T. R. 48. Robert Hardy was removed from Knighton to St. Margaret. Order quashed. Case:—The pauper took a windmill in St. Margaret's of ten guineas a year, at Lady-day, 1778, and occupied it for

19. *Residence.*

the same tenement with her husband for sixteen days preceding, so as to gain her a settlement.

Where the tenant is in the rules of the Fleet, and he has in the same parish a tenement he rents, he paying the rent, he gains a settlement.

The residence must be in the parish where some part of the tenement lies.

Same point.

(a) See however the several statutes, *ante*, p. 583, relating to residence in prisons, &c.

19. *Residence.*

one year. On the 30th of April following he married Anne, the daughter of Samuel Ward, of Knighton. Before the marriage Ward said he would give him house-room till he could provide himself; and on his marriage he went accordingly to reside with his father-in-law at Knighton, whose house was about a quarter of a mile distant from the mill; and he continued there until the death of Ward, in 1786. During the time he occupied the mill, or afterwards, he neither rented nor occupied any land in Knighton. During the last half year he rented the mill he kept a servant, who resided with him in Ward's house as part of his (the pauper's) family. The pauper believed it was known to Knighton that he rented the mill, because he served some of the inhabitants there with grist, and they knew him to be a miller. *Ashhurst, J.* delivered the opinion of the court, (after taking time to consider). "The question in this case is, whether the pauper gained a settlement in the parish where he rented a tenement of the yearly value of 10*l.*, or in the parish where he resided, occupying at the same time a tenement in another parish? And we are all of opinion that he did not gain a settlement in Knighton, because, *in order to gain a settlement by renting 10*l.* per annum, there must be a residence either on the premises, or at least in the parish where some part of the premises lies.* *Rex v. Topcroft* (*ante*, 673) is decisive of the question; and there are two or three other cases, *Rex v. Butley* (*Burr. S. C.* 107, *ante*, 621), which confirm this doctrine, where it has been taken for granted that there must be a residence." Order of sessions quashed.

It is not necessary to the gaining of a settlement by coming to settle upon a tenement, that the pauper should reside upon any part of it.

Rex v. Kenardington, 6 *Bar. & Cress.* 70; 9 *D. & R.* 72, *S. C.* Appeal against an order for the removal of W. Knight and family from Kenardington to Ulcomb. Order quashed. Case:—The pauper, W. Knight, when about sixteen years of age, hired himself for a year to T. Knight, at the wages of four guineas: he served the year in the parish of Ulcomb, dwelling in his master's house there, and received his wages. He afterwards, and about twenty-two years ago, married Sarah his wife; and having, about four years after his marriage, removed to Kenardington, he entered into a contract with Joseph Stead, a farmer there, to serve him as a labourer upon his farm, at the wages of 16*s.* a week, to have his wheat at 6*s.* a bushel, butter at 1*s.* a pound, and a small house of his master's situate in his master's farm rent free to live in. He entered into the service, and continued in it under these terms for three years; and between Christmas and Lady-tide, in the third year of his service with Stead, the pauper, with two other persons, hired of Joseph Boon seven acres and a quarter of land in the parish of Kenardington, at the price and of the value of 25*l.* 7*s.* 6*d.*, being 3*l.* 10*s.* per acre; and at the same time he, on his own account, took an acre of land in the same parish of Joseph Boon, at the price and of the value of 50*s.* The seven acre piece was cultivated and cropped with potatoes, and the expenses and the rent for the same were paid equally by the pauper and his two partners; but the one acre piece was cultivated and cropped with potatoes by and at the sole expense of, and rent for the same was paid by the pauper alone; thereby making his renting in the parish of Kenardington at one time 10*l.* 19*s.* 2*d.*; and these two parcels of land were held together by the pauper, and by the pauper and his partner six months. The pauper at no time resided on any part of the land taken of Joseph Boon, but resided in the small house of his master's on his master's farm, as his servant. At the end of the three years he quitted Stead's employment, and at the same time left his house. *Bayley, J.* "I am of opinion that the order of sessions was right; a settlement having been gained in Kenardington. The argument against the settlement is, that although the pauper rented a tenement of more than 10*l.* annual value, yet as he did not reside upon any part of it, but with a master, no settlement was gained. In *Rex v. Bardwell* (2 *B. & C.* 161; 3 *D. & R.* 369; *ante*, 616), expressions were certainly used by *Best, J.* and me, giving a larger meaning to the words *coming to settle* in the 13 & 14 *Car.* 2, c. 12, than we ought to have done, and *Rex v. Shipdam* (*ante*, 617) was decided on the same ground. In *Rex v. Benneworth* (2 *B. & C.* 775; 4 *D. & R.* 355; *ante*, 603), the court took time to consider the question; because they were pressed with the former decisions, and re-considered them. The point is not mentioned in the judgment pronounced in

Rex v. Benneworth; but that judgment could not have been given if the court had been of opinion that *Rex v. Bardwell*, and *Rex v. Shipdem*, were well decided. In *Rex v. Sutton St. Edmunds* (1 B. & C. 536; 2 D. & R. 800; ante, 598), it appeared that the pauper entered into a service where he was to have 18*l.* a year wages, and the keep of two cows. He lived in a cottage on his master's farm; but it was found that the occupation of the cottage was incidental to his service. The court held that he did not gain a settlement; because there was no bargain that the cows should be pasture fed. If the court had then thought residence upon the tenement necessary the case would not have admitted of an argument, and the other point would not have been made the ground of the decision. In *Rex v. All Saints, Derby* (ante, 588), there could not be any residence on the tenement, and yet a settlement was gained. In *Rex v. Benneworth* also there was no residence on the tenement, and the renting of the tenement was during the service. It can make no difference, whether the bargain for the tenement is connected with the contract for service, or whether, as in this case, it is a separate contract made with a third person." *Littledale, J.* concurred. Order of sessions confirmed.

Rex v. St. Mary, Lambeth, 8 T. R. 240, 241. John Taylor was removed from St. Olave to St. Mary, Lambeth. Order confirmed. Case:—The pauper, about four years ago, took a tenement at the yearly rent of twelve guineas, in St. Mary, Lambeth, and continued tenant thereof until 29th September, 1797. He resided in that tenement from the time of taking it, until 24th June, 1797, when he took a lodging for the convenience of his business, at the rent of 8*l.* 10*s.* a year, in St. Mary-le-bone, where he occasionally slept, leaving his family at Lambeth: both tenancies expired on 29th September, 1797. The pauper slept sometimes in Lambeth and sometimes at his lodgings in St. Mary-le-bone, and for above forty days in the whole upon the tenement in St. Mary-le-bone, and he slept there the last thirty nights of that tenancy. His family never accompanied him, or slept in St. Mary-le-bone, but remained at the house in Lambeth until about three weeks previous to Michaelmas-day, 1797, when she went away, and took the furniture away with her. The court said there could be no doubt but that the pauper's settlement was in St. Mary-le-bone, where he had a tenement of above the annual value of 10*l.* when joined to the other in Lambeth, and in which former tenement he had resided on the whole above forty days, and where he had slept the last night. The question was too plain for argument." Both orders quashed.

Where a residence is in different parishes, and in one of them for forty days at different intervals, and the pauper sleeps there the last night, the settlement is gained there.

Rex v. Ringwood, 1 M. & S. 381. Lord *Ellenborough*, C. J. in the course of the argument, said, "The court will not enter into minute inquiries whether the pauper *slept*, in the literal sense of the word, during the last night of his residence,—what will satisfy *pernoctavit* is sufficient."

Place of sleeping.

20. Residence and other Requisites under 59 Geo. 3, c. 50, 6 Geo. 4, c. 57, 1 Will. 4, c. 18.

20. Residence, &c.

It is here essential to consider each of those enactments. The 59 Geo. 3, c. 50, enacted that no person shall acquire a settlement in any parish or township maintaining its own poor, in England, by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township; being a separate and distinct dwelling-house or building: or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid for the term of one whole year at the least, by the person hiring the same: nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit, any thing in any act or acts, or any construction of or implication from any acts or any usage or custom to the contrary notwithstanding.

59 G. 3, c. 50, no settlement shall be acquired by renting any tenement except a house or land in the parish *bonâ fide* hired at and for ten pounds a year, &c.

By 6 Geo. 4, c. 57, (passed June 22, 1825), reciting that the ascertaining

20. *Residence,*
 &c.

No settlement to be gained unless the person hiring the house, land, &c. occupy it in the same parish, &c. for a year, and pay 10*l.* rent at the least.

If the rent be above 10*l.*, payment of 10*l.* to be sufficient.

Residence for forty days sufficient since 59 Geo. 3, c. 50.

the value of tenements had given rise to very expensive litigation, and that doubts had been entertained whether the 59 Geo. 3, c. 50, had been effectual for the purpose of altering the law in respect of the necessity of proving the annual value of tenements so rented, the 59 Geo. 3, c. 50, is repealed; and by sect. 2 it is enacted that no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate or distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township, at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of 10*l.*, actually paid for the term of one whole year at the least: Provided always that it shall not be necessary to prove the actual value of such tenement; anything in any act or acts, or any construction of, or implication from any act or acts, or any usage or custom to the contrary notwithstanding.

By 1 Will. 4, c. 18 (passed March 30th, 1831), reciting 6 Geo. 4, c. 57, and that doubts had arisen with respect to the intentions of the legislature concerning the occupation of such house, building, or land, by the person hiring the same, and concerning the amount of the rent to be paid, and the person paying the same, it is enacted that, after the passing of this act, no person shall acquire a settlement in any parish or township maintaining its own poor by or by reason of such (a) yearly hiring of a dwelling-house or building, or of land, or of both, as in the said act expressed, unless such house, or building, or land, shall be actually occupied under such yearly hiring in the same parish or township, by the person hiring the same, for the term of one whole year at the least; and unless the rent for the same to the amount of 10*l.* at the least shall be paid by the person hiring the same.

Sect. 2. Provided that, where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for gaining a settlement under the said recited act. And see 4 & 5 Will. 4, c. 76, s. 66, Appendix.

It has been already noticed, that the land or buildings, by renting which a settlement is to be gained, must *all* be in the *same parish*, and although the latter of these statutes requires that the tenement shall be *occupied*, yet it does not follow that a longer *residence* is necessary than heretofore. (See the statutes, *ante*, 583.)

A residence therefore for forty days, and although not on the tenement, if it is in the parish, is sufficient under these statutes, as it was before they were passed.

In *Rex v. Ditchet*, 9 B. & C. 183; 4 Man. & R. 151 (*ante*, 660, 672), it was assumed that if the pauper himself had resided for forty days, he would have acquired a settlement. *Littledale*, J. said, that the legislature did not, by 6 Geo. IV. c. 57, intend to alter the law in that respect.

Rex v. Wainfleet, 8 B. & C. 229; 2 Man. & R. 223 (*ante*, 634). *Bayley*, J. “Another objection is, that the pauper did not reside on the land, though he resided in the parish; and, secondly, that he did not reside in the parish for a year. Before the 59 Geo. III. c. 50, actual residence in the parish for forty days upon a tenement of the yearly value of 10*l.* conferred a settlement, although the party did not pay any rent for the forty days. But the 59 Geo. III. altered the law in that respect, and the language of that statute must be abided by as nearly as possible. It enacts, that no person shall acquire a settlement in any parish by reason of dwelling for forty days in any tenement rented by such person, unless certain conditions mentioned be complied with.

It seems, therefore, that residence for forty days will be sufficient, if the other requisites of the act have been complied with. Now it requires among other things, if the tenement consists of land, that it should be hired and

(a) Must be the same, and not a second hiring, *Rex v. Banbury*, 1 Adol. & Ellis, 136; 2 Nev. & Man. 105.

occupied for the term of one year at 10*l.*, and the rent for that period paid. Here all this has been complied with. It does not appear, therefore, to be essential in this case that the pauper should have continued in the parish for one year. It is sufficient if he resided in the parish for forty days, provided he hired and occupied the land in the parish for the year, and paid the rent for that period.

21. THE OCCUPIER ASSESSED TO AND PAID POOR RATE UNDER 4 & 5
WILL. IV. c. 76, s. 66.

We have seen that the 4 & 5 Will. IV. c. 76, s. 66, enacts that from and after the passing of this act (14th August, 1834), no settlement shall be acquired or completed by occupying a tenement, unless *the person occupying the same* shall have been assessed to the poor rate, and shall have paid the same in respect of such tenement for one year.

22. OF THE EVIDENCE OF SETTLEMENT BY RENTING, &c.

Rex v. Castle Morton, 3 B. & Ald. 588. Removal from Tewkesbury to Castle Morton. Order confirmed. Case:—James Bedward, the husband of the pauper, took a tenement in Longdon of Miss Poole; the terms of the taking were contained in a written agreement, unstamped, which was lost. J. B., after residing on the tenement about half a year, gave Miss Poole 3*l.* to be off the bargain, and entered into a fresh agreement with Mr. Percent, the landlord of Miss Poole, who accepted him as tenant in her stead. Parol evidence of the contents of the unstamped agreement was offered, in order to prove the amount of rent agreed for between Bedward and Miss Poole, and refused. *Dover v. Maester* (5 Esp. 92,) was cited. Abbott, C. J. "The promissory note was there admitted in evidence, on the ground that the defendant, who had been in that case guilty of a crime, should not be allowed to relieve himself from the consequences of it by such an objection. And so in the case of forgery, a prisoner cannot object that the forged instrument, when produced, cannot be given in evidence for want of a proper stamp. But this case is very different; for the parties here seek to show the value of a tenement by the proof of a contract previously entered into respecting it. The contract was not therefore in this case collateral, but of the very essence of the case. Nor can it be introduced as a declaration; for it is a declaration made under such circumstances as prevent its being admitted in evidence." Order affirmed. (a)

Rex v. Holy Trinity, Kingston-upon-Hull, 7 B. & C. 611; 1 M. & R. 444. Removal from Eccleshall to Hull, confirmed. Case:—On cross-examination of the pauper, who proved a settlement in the appellant parish, the appellants were proceeding to show that he had acquired a subsequent settlement by the occupation of a tenement, and to prove the rent paid, but the respondents interposed, and asked if the contract for the tenement was not in writing, and he admitted it was. The appellants contended that they might prove the fact of occupation, and the value of the tenement, without reference to the agreement, but the sessions refused it. Bayley, J. "The general rule is, that the contents of a written instrument cannot be proved without producing it. But although there may be a written instrument between a landlord and tenant, defining the terms of the tenancy, the fact of the tenancy may be proved by parol, without proving the terms of it. It was unnecessary in this case to prove by the written instrument either the fact of tenancy or the value of the premises." Littledale, J. "Payment of rent as rent is evidence of a tenancy, and may be proved without producing the written instrument." Case sent back to the sessions, to hear the evidence. (b)

(a) Upon counsel alluding to this case in *Rex v. Hull*, 7 Barn. & C. 613, Bayley, J., said "There the court only held that they could not receive parol

evidence of a written agreement which was void."

(b) In a case precisely similar in its circumstances (though it was an action

20. Residence,
&c.

21. The Occupier
assessed to and
paid Poor Rate
under 4 & 5 W. 4,
c. 76, s. 66.

No settlement
shall be acquired
unless occupier
has been rated
and paid poor
rate for one year.

22. Of the Evi-
dence of Settle-
ment by Renting,
&c.

An agreement in
writing, un-
stamped, for the
letting a tenement
at a certain rent,
having been lost:
Held, that parol
evidence of its
contents was not
admissible for the
sake of proving
thereby the value
of the tenement.

A tenancy under
a written contract
may be proved by
the payment of
rent.

22. *Evidence of Settlement.*

But a presumption of tenancy, arising from occupation, cannot be negatived without proving the written agreement.

Rex v. Rawden, 8 B. & C. 708; 3 Man. & R. 426. Removal from Idle to Rawden, confirmed. Case:—The pauper occupied a tenement for a year, and paid rent for it. In answer to this it was insisted, that the pauper was a joint tenant with two others, and to prove this the steward of the landlord was called, who said he did not know who occupied the tenement. He was then asked to whom he had let it, and who were the tenants, but being asked if there was not an agreement in writing, he admitted there was. The sessions received the parol evidence. Bayley, J. "The question in this case is, whether the evidence of the steward was sufficient to rebut a *prima facie* case of tenancy made out by the appellants? In *Rex v. Hull* the question at the sessions was, whether the pauper came to settle on a tenement in the character of tenant? The proof was that he occupied and paid rent. The court thought that was *prima facie* evidence that he came to settle in the character of tenant; there can be no doubt that a party may, by keeping out of view a written instrument, make out by parol testimony a *prima facie* case of a tenancy, and it then lies on the opposite party to rebut it. Here the appellants made out a *prima facie* case. The respondents attempted to vary it, by proving that the premises were let to the pauper jointly with others; but that letting was by a written instrument. It is quite clear it could be proved only by the production of a written instrument." Littledale, J. "This case is perfectly different from *Rex v. Hull*. There the tenancy was proved by occupation and payment of rent. That was *prima facie* evidence of tenancy. Here the parol evidence was adduced to negative the presumption of tenancy arising from occupation and payment of rent." Parke, J. "A general hiring of land is presumed to be a yearly hiring." (*Rex v. Wainfleet*, 8 B. & C. 229; 2 M. & R. 223; ante, 634.)

If the occupier is dead, proof of his occupation, and evidence of his declarations as to the terms on which he held, will suffice.

Proofs by which a *prima facie* case of tenancy may be rebutted.

If the occupier of the tenement is dead, the fact of his possession being first proved, any declarations which he may have made when in possession, tending to show in what manner or on what terms he occupied, may be given in evidence. A *prima facie* case being thus made out, may be met by proof that the occupation was *against* the consent of the landlord, or that the party occupied in the capacity of bailiff or servant to the owner of the property, or only a privilege allowed him in respect of something else, which was the principal thing.

The rent, if there be no fraud, is a very fair criterion of the value.

23. *Effect of Fraud.*

23. EFFECT OF FRAUD. (a)

If the renting is colourable between the parties to the contract, or in any way fraudulent, the settlement will be defeated. (As to the effect of fraud, see *Rex v. St. Michael's Bath*, Dougl. 630; *Rex v. Edington*, 1 East, 288; *Rex v. Launceston*, 3 East, 226.)

Taking land, without stocking it, held to be fraudulent.

Rex v. Woodland, 1 T. R. 261. The pauper went to Ashburton, where he rented a cot-house at 1*l.* 12*s.* per annum, in which he resided; during which time he took a meadow in Woodland, at the rent of ten guineas, of one M. N., who resided in the same parish. The pauper did not stock it at all, but at Christmas he let the grass for 3*l.* 3*s.* to Edward Barter till Lady-day following, who stocked it and paid the rent to him. Several persons offered to take the grass of the pauper before he let it to Barter. The pauper laid up the ground for mowing, and then let the mow to M. N. for five guineas, and the after-grass for two guineas. At the end of the year, when the pauper settled accounts with M. N., he received two guineas on balance of accounts, after allowing five guineas to M. N. for the half year's rent then due; M. N. had frequently made a practice to take ground and let it again in parcels (it was the case now); three years before this transaction, the pauper had re-

for an injury to the reversion), the judges of the Court of Common Pleas were divided in opinion. Best, C. J. and Burrough, J. being of the opposite opinion to that given in the above case upon the point; and Park, J. and Gaselee, J.

concurring in the opinion of the Court of King's Bench. (See *Strother v. Barr*, 5 Bing. 136; 2 M. & P. 207.)

(a) See division of the subject, ante, 580.

ceived relief from Woodland, and half a year after the expiration of the term, his wife received relief from Woodland. The sessions were of opinion that the said taking was fraudulent. The Court of King's Bench said they were of opinion that it was a fraudulent taking, and they would give no opinion upon the right of the court to examine into the propriety of such conclusion by the sessions.

In *Rex v. Fillongley*, 2 T. R. 709, which was a question arising upon a settlement by taking a tenement, Lord Kenyon, C. J. said, "There is no rule better established than that fraud is never to be presumed, and I believe in a case sent for the opinion of this court, which was pregnant with fraud, they would not presume fraud, because it was not so stated. (See *Rex v. Llanbedergoch*, ante, 671.) See *Rex v. St. Sepulchre*, Cambridge (1 B. & Adol. 924; ante, 654), where it was held that no settlement was gained under 6 Geo. IV. c. 57, where the case stated that the rent had been paid by the parish officers for the occupiers, *fraudulently* for the purpose of gaining the settlement.

Rex v. Tillingham, 1 Bar. & Adol. 180. Upon appeal against an order of two justices, whereby J. Spells and his wife and children were removed from Bradwell to Tillingham. Order confirmed. Case:—About Michaelmas, 1827, the pauper, who it was admitted was before legally settled in Tillingham, hired a house, garden, and bakehouse, situate in Bradwell, of Mr. John Willis, under the following agreement: "Mr. Jonathan Spells agrees to take the house and shop late in the occupation of John Stoker, situate in the parish of Bradwell, Essex, at the yearly rent of 10*l.* for the first two years, to commence at Christmas, 1827, clear of all rates and taxes, landlord's excepted, half yearly payments: Jonathan Spells." The pauper took possession of the premises at Christmas, 1827, and occupied them a whole year. He also paid a year's rent for them, under the following circumstances: Soon after Midsummer, 1828, Mr. Willis applied to the pauper for a half year's rent then due, which he was unable to pay. Shortly after Michaelmas, 1828, a similar application was made for three quarters of a year's rent then due, but no money was paid. The pauper being then distressed, his business of a baker failing, and his family in want, applied to Mr. Stowers, one of the overseers of Tillingham, for relief, and also for a sum of money to enable him to pay his half year's rent, and to carry on his business. Mr. Stowers gave the pauper 1*l.* for relief, and directed him to call again two or three days afterwards. The pauper did call again accordingly, when he received from Mr. Stowers the sum of 12*l.* 10*s.*, 7*l.* 10*s.* of which he paid to his landlord for the three quarters of a year's rent due at Michaelmas, and the remaining 5*l.* he applied in carrying on his business and supporting his family. Shortly after Christmas, 1828, Mr. Robert Willis, one of the overseers of Tillingham (but not the acting one), who was the nephew of the proprietor of the house in which the pauper resided, and acted as agent to his uncle, applied to the pauper for one quarter of a year's rent then due. The pauper said he was unable to pay it, and that he must apply to Mr. Stowers for relief for himself and his family. Mr. Willis said that if the rent was not paid the next day, he should put in a distress, to which the pauper replied he did not consider there was any rent due until the following Michaelmas, 1829. The pauper afterwards again applied to Mr. Stowers for relief; Mr. Willis was present, and asked the pauper if he would object to pay the rent if he had the money in his pocket; to which the pauper replied no, but repeated that he did not consider there was any rent due. Mr. Stowers then desired the pauper to withdraw for a few minutes, that he and Mr. Willis might consult upon the business. The pauper did withdraw accordingly, and in a few minutes was called in again, when Mr. Stowers gave him 3*l.* Mr. Willis then demanded of the pauper payment of the one quarter's rent, and the pauper accordingly paid him 2*l.* 10*s.*, reserving only the remaining 10*s.* for himself; as he was going away, the pauper asked Mr. Stowers where he was to apply for relief when the 10*s.* were gone, saying that he supposed as he had paid a year's rent for his house he was in future to apply to the parish of Bradwell, to which Mr. Stowers replied that he was. Previously to his advancing the sums of

23. *Effect of Fraud.*

The Court of K. B. will not presume fraud.

Where upon the trial of an appeal, the question was, whether the pauper had gained a settlement by renting a tenement in parish A. and it appeared that he being then settled in parish B., had applied to the officers of the latter parish for relief, and they gave him a sum of money, which enabled him to pay his landlord a year's rent for the tenement in A., whereby he would become settled in A., it is a question of fact for the sessions, whether that payment was fraudulent or not; and if they find that the money was paid solely to enable the pauper to gain a settlement in A., they ought to find fraud; but if of opinion that the money was paid for the purpose of relieving him, they ought to negative fraud.

23. *Effect of Fraud.*

7l. 10s. and 3l. to the pauper, Mr. Stowers consulted the other parish officers of Tillingham upon the propriety of making such advances, and both those advances were made with their knowledge and approbation. He also took the opinion of two magistrates of the district upon a supposed case, and was advised by them that he might safely and properly make such advances, and that his so doing would not prejudice the pauper's right to acquire a settlement in Bradwell. The sessions did not assign fraud as the ground for determining that no settlement had been acquired in Bradwell, but stated, that as the facts of the case were novel, they were desirous of having the opinion of the Court of King's Bench whether the payment of rent under such circumstances was a legal payment. *Bayley, J.* "It is not for this court to draw the conclusion of fraud from the facts stated. It was a question for the justices at sessions whether there was fraud or not. If the money was paid by the overseer to the pauper when he was actually under pressure, as for the purpose of relief, that would be no fraud; but if it was paid not with a view to relief, but only to get rid of the pauper and to throw the burden of maintaining him on another parish, that would be fraudulent. I think that this case should go back to the sessions, in order that they may state that there was fraud, or that there was none. If upon this evidence they shall be of opinion that the money or any considerable portion of it was paid by the overseer for the sole purpose of fixing the pauper on one parish, and enabling the other to get rid of him, they ought to find fraud; but if they shall be of opinion that the money was paid *bonâ fide* with the sole view of relieving the pauper, they ought to negative fraud." Case sent back to the sessions.

8. *Of Settlement by Estate.*
General observations.

8. *Of Settlement by Estate.*

The favor with which the ownership of real property, as indicative of individual respectability, has always been regarded, is corroborated, among many other of our civil institutions, by the law of parish settlements.

It has been seen under the last title, that the *credit* and confidence reposed in a man who has been trusted *as tenant* with the occupancy and temporary possession of a 10l. a year tenement, was sufficient to exonerate him from the condition of legal vagrancy, and to confer upon him the privilege of a settlement, although he in fact remained in the place where he was thus located not more than forty days. The law on this subject has certainly in more recent times been limited and restrained by various statutory regulations; but the observation applies with almost unabated force to settlements by *estate*; the only condition superadded by modern legislation to the acquisition of this settlement being, that if the estate be acquired by the party's *own act*, that is, by pecuniary purchase, it must be of the value of, or rather that the price paid must be 30l. at the least. With this exception, whether the individual be owner in fee, copyholder, mortgagee, or leaseholder, executor, or administrator, or come to the possession in any other way by operation of law, his title to the land is sufficient to give him a settlement, although he may not have the beneficial ownership. It is also settled, that an *equitable estate* is sufficient for this purpose, though a mere *equitable interest*, which a court of equity might probably sustain and enforce, is not. The case of *Rex v. Stone* (6 T. R. 295, *post*, 689), proves that the nature of the tenure or quantity of interest is immaterial, and that even an executor, by residing on a leasehold estate belonging to him in that character, may acquire a settlement.

The principle upon which these settlements are founded is, that the party ought not to be removed from his own, but is entitled to the superintendence and care of his property, however small the annual value. (a) Having land

(a) *Ryslip v. Harrow*, Salk. 524; *Burr. S. C.* 132; *Rex v. Houghton-le-Rex v. Uttoxeter*, *Burr. S. C.* 538; *Rex v. Spring*, 1 East, 247; *Rex v. Stapleton*, *v. Reading*, *id.* 412; *Rex v. Hasfield*, 2 B. & Ald. 527. *id.* 147; 2 Stra. 1132; *Rex v. St. Nyotts*,

in a parish will not of itself make a settlement, but *living* in a parish where one has land, will gain a settlement without notice; for the act (13 & 14 Car. II. c. 12,) never meant to banish men from the enjoyment of their own lands. (a) No one can be removed from the parish in which his freehold is situated within the first forty days of residence: but if he quits it voluntarily before he has been resident forty days, and becomes indigent, he cannot be removed thither. In order therefore to acquire a perfect settlement by estate, the party must have resided forty days in the parish in which his estate lies, and while his interest continued. (b)

This head of settlement admits of the following general arrangement and subdivisions.

I. Of the STATUTES relating to Settlement by Estate.

II. Of Estates acquired otherwise than by Purchase for pecuniary Considerations.

First, The Nature of the Property.

Secondly, The Tenure.

Thirdly, The Annual Value.

Fourthly, The Interest in the Estate, and who may acquire a Settlement.

1. Of Infants.

2. Executors, Administrators, and the Next of Kin.

3. Trustee and Cestui que Trust.

4. In Remainder.

5. Dower.

6. Wife's Interest in Trust.

7. Guardian of Ward's Estate.

8. Estate in Mortgage.

9. Estate acquired by Possession without a perfect Title.

III. Of Estates by Purchase, for pecuniary Consideration, under 9 Geo. I. c. 7.

First, What is a Purchase within the Statute.

Secondly, Of the Consideration paid.

Thirdly, Money laid out on Estate after Purchase.

Fourthly, Equitable Interest in purchased Estate.

IV. Of the requisite RESIDENCE on the Estate in General.

I. OF THE STATUTES RELATING TO SETTLEMENT BY ESTATE.

No statute *expressly* creates any settlement by estate. The only statutes relating to this subject are the 13 & 14 Car. II. c. 12, s. 1, and the 9 Geo. I. c. 7. The first directs the sending a pauper to the place where he was last legally settled for the space of forty days. The last prevents a person who has not *bonâ fide* paid 30*l.* for a purchased estate, from acquiring a settlement by such estate.

By 13 & 14 Car. II. c. 12, s. 1, "that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid in any tenement under the yearly value of 10*l.*, for any two justices of peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, *sojourner*, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

1. Of the Statutes relating to Settlement by Estate.

13 & 14 Car. 2, c. 12.

Persons who settle in tenements under 10*l.* a year, are removable to place of legal settlement.

(a) *Per Holt, C. J., in Ryslip v. 307; Wookey v. Hinton Blewett, 1 Stra. Harrow, 2 Salk. 524. 576; 2 Nol. P. L. 115; Harrow v. Edge-*

(b) *Rex v. West Sheffield, Burr. S. C. ware, Fol. 257.*

1. *Statutes relating to Settlement by Estate.*

9 Geo 1, c. 7, s. 5.
No settlement to be acquired by purchase, if consideration or purchase-money is under 30*l*.

Per Lee, C. J. in Rex v. St. Nyotts, Burr. S. C. 132. "The statute, 13 & 14 Car. II. c. 12, does not expressly mention residence as *owner* of an estate. This species of settlement must therefore either depend upon being an exception to the modes of acquiring settlement specified in the act, or upon applying the term '*sojourner*' (a) to persons lawfully inhabiting a parish and who cannot be removed from it."

The 9 Geo. I. c. 7, intituled an "An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor," section 5, enacts, "That from and after the twenty-fifth day of March, which shall be in the year of our Lord one thousand seven hundred and twenty-three, no person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place for or by virtue of any purchase of any estate or interest in such parish or place whereof the consideration for such purchase doth not amount to the sum of thirty pounds, *boná fide* paid, for any longer or further time than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled before the said purchase and inhabitancy therein."

This act is confined to cases of estates acquired by *purchase* in the vulgar acceptation of that term, for which a consideration amounting to 30*l*. must be *boná fide* paid. It does not *create* or *enable* persons to acquire a settlement, but *prohibits* them from gaining one, except under certain circumstances.

4 & 5 Will. 4, c. 76, s. 68.
No settlement by possession of estate longer than the person shall inhabit within ten miles thereof.

By 4 & 5 Will. IV. c. 76, s. 68, it is enacted, "that no person shall be deemed, adjudged, or taken to retain any settlement, gained by virtue of any possession of any estate or interest in any parish for any longer or further time than such person shall inhabit within ten miles thereof: and in case such person shall seem to inhabit within such distance, and thereafter become chargeable, such person shall be liable to be removed to the parish wherein previously to such inhabitancy he may have been legally settled, or in case he may have subsequently to such inhabitancy gained a legal settlement in some other parish, then to such other parish."

2. *Of Estates acquired otherwise than by Purchase or for Pecuniary Consideration.*

1. Nature of property.
Generally land or houses.

2. OF ESTATES ACQUIRED OTHERWISE THAN BY PURCHASE, OR FOR PECUNIARY CONSIDERATION.

First. Of the Nature of the Property.

It has been observed that the nature of the *thing* or property out of which the interest which is to confer a settlement must arise, has not been expressly defined. The reported cases generally respect settlements by estate in *land* or *houses*, and it is no where directly considered, whether a settlement can be acquired by an estate in a "*tenement*," as that word has been explained under the 13 & 14 Car. II. c. 12, or in the more extensive denomination of property called an "*hereditament*." (b) The principle upon which these settlements is founded, before adverted to, (c) seems to extend this right to all interest in *things immoveable*, situate within a town or parish, which as the party cannot take them with him to the place of his settlement, he must be allowed to remain where they are for the purpose of superintending them. (d)

Must be some *realty*.

It is clear however that the interest must issue out of the *realty* locally situated in the parish where the settlement is sought; (e) and it should seem it must be such an interest as would entitle the party to take possession of such *realty*, and therefore an annuity charged by will on *personalty* or *chattel real*, or even a *rent charge* out of *freehold*, would not constitute a settlement. (f)

Not a mere *rent charge*.

Living upon a *leasehold* estate out of which and other personal property the per-

Rex v. Stockley Pomroy, Burr. S. C. 762. E. being possessed of an estate in C. for a term of years determinable on the death of S. W., the mother of J. W., the pauper, in and by her last will devised to her grandson, J. W., the pauper, *the sum of 10*l*. a year, to be paid by her executors in*

(a) See the words of the 13 & 14 Car. II. c. 12, *supra*.

(b) 2 *Nol. P. L.* 69.

(c) *Ante*, 680, 681.

(d) 2 *Nol. P. L.* 69.

(e) *Id. ibid.*

(f) *Rex v. Stockley Pomroy, Burr. S. C. 762, post.*

trust therein named, *out of her estate*, during the said J. W.'s mother's life; and if her grandson J. W. should happen to die before his mother, S. W., that then his brother and sister, W. and M., should have and enjoy the aforesaid 10*l.* a year of like lawful money, to be paid by her executors in trust therein named, yearly and every year during the life of her daughter, S. W., aforesaid; and in case W. W. and M. W., her grandchildren aforesaid, should either of them happen to die before their mother, S. W., that then her will and pleasure was that the survivor of them should have and enjoy the aforesaid legacy of 10*l.* a year in manner and form aforesaid payable; the testatrix soon afterwards died, without altering or revoking her will, and left at the time of her decease the leasehold estate above mentioned, and effects to the amount of 32*l.* only and no more. The pauper, J. W., being settled in S. and considerably in debt, in order to avoid his creditors went to reside in C., and there resided with his mother on the leasehold estate, and did carry on the business of a jobber in cattle during the continuance of the annuity and while the same was due and payable for the space of forty days and upwards, between Midsummer, 1770, and Midsummer, 1771: it did not appear that the annuity was rated to any of the public levies. Lord Mansfield said, "There was no colour for adjudging the pauper to have gained a settlement in Cheriton Fitzpayne. He did not go thither to reside upon his own: he absconded there to avoid his creditors. This was *no specific legacy*: it is payable out of her whole personal estate. But if it were a specific legacy, has a specific legatee any right to go and *live upon* the estate? If it had been a rent-charge out of a freehold, it would not give a right to *live upon* such freehold. But this man had only a *pecuniary* demand. There was no colour for his going to live upon this leasehold estate as his own." The other three judges concurred. Order affirmed.

Rex v. Milborne, 1 Wilson, 87; Burr. S. C. 244. T. Membury, a certificate man, came from the parish of Sheepshead to the parish of Milborne, by a certificate dated November, 1733; was a schoolmaster and taught the charity-school there until his death, in 1743; but in what manner he was admitted to the school it does not appear, but only in general that he officiated till his death. That Lady Ann Hastings had by deed conveyed to trustees 10*l.* per annum in trust to be paid to the vicar of Milborne for the time being for the charity school; that this 10*l.* per annum had not been appropriated to any other use than paying it to the schoolmaster; and whether Thomas Membury had gained a settlement at Milborne, either by serving an office or having a freehold in the school of 10*l.* a year was the question; and the sessions were of opinion and declared he gained a settlement there as having had a freehold in the school. But *per curiam*, (*absente Foster, J.*) "A schoolmaster is not an office but only an employment; and what interest Thomas Membury had in the school, whether for life, or how otherwise, or how he was admitted to or came into this employment, does not appear; and that the vicar is the person entitled to the 10*l.* per annum, and not choosing to teach the school himself paid it to this poor man as his deputy, which could not gain a settlement for any person whatever." Order quashed. (a)

It seems that land held as an appurtenant to an office, will not give a settlement by estate. The case was as follows. By an award made by the authority of the lord of the manor and certain commoners an allotment of a portion of the lands enclosed was awarded to "the shepherd for the time being." It was also provided by the award, that the shepherd was to keep the fences in repair. The shepherd had been for many years appointed by the commoners, and was liable to be discharged like any other yearly servant. It was also held that a person who had in fact filled the situation of shepherd and enjoyed the allotment for several years, did not thereby gain a settlement by estate. His situation being yearly, from which he was liable to be discharged, and his taking to the allotment not by virtue of the award, (to which he was

2. Of Estate-acquired other wise than by Purchase, &c.

son has a rent charge only, gains no settlement.

S. P. as to a rent charge on a freehold.

An annuity charged on real estates to a charity school, to be paid to the vicar, is not an interest to the person officiating as schoolmaster which gives a settlement.

Land held as appurtenant to an office in the nature of a yearly service will not give a settlement.

(a) *Rex v. Milborne*, Burr. S. C. 244; 1 Noll. P. L. The pauper resided under a certificate. See 9 & 10 W. III. c. 11. But if the schoolmaster is in effect the *cestui que trust*, residing upon what is substantially his own, he acquires a settlement. (See *Rex v. Owersby le Moor*, 15 East, 356, and 2 Noll. P. L. 88.)

2. *Of Estates acquired otherwise than by Purchase, &c.*

In an award for the division of common field lands, an allotment was made for the shepherd of the common sheep flock: Held that the shepherd being hired by the year had no such interest in the land as would give him a settlement by estate.

a stranger) but by virtue of his situation as shepherd, the court considered his occupation of the allotment to be a part of the consideration or wages for his service, and that he had no title either legal or equitable to the land, but merely the right to occupy so long as he was in the place of Shepherd. (*Rex v. South Newton, next case.*)

Rex v. South Newton, 10 Bar. & Cres. 838. Removal of T. Brown and family from Woodford to South Newton, both in the county of Wilts. Order confirmed. Case:—The pauper in 1823, while single, was hired as shepherd by the tenantry farmers of the manor of Lower Woodford for eleven months at 14s. per week, and was to have a piece of land called the Shepherd's Croft, which was to make up money as good as 16s. a week, to keep certain sheep belonging to them called the tenantry flock. Payment of his monied wages was made quarterly by the tenantry farmers. The pauper after serving eleven months was hired again for one month. Before the end of the month the pauper was hired "to go on again upon the same terms." He served a year under this last hiring and slept the last forty nights at South Newton, the appellant parish, having married in the course of that year. The tenantry farmers above mentioned are leaseholders and copyholders of the manor of Lower Woodford. By an agreement under seal, made June the 12th, 1799, the parties to which were the Bishop of Salisbury, lord of the manor of Lower Woodford, the leaseholders and copyholders of that manor, and William Beckford, of Fonthill Gifford, Esq. who then held the manor under the bishop for three lives, reciting among other things that the leaseholders and copyholders were entitled to divers lands within the manor by virtue of the several leases and copies to them thereof granted, arbitrators were duly appointed for dividing and allotting the open and common fields and common downs within the said manor. The power of these arbitrators were, "to set out, ascertain, and allot the said open and common fields and common downs so intended to be divided and allotted as aforesaid, unto and amongst the said W. Beckford in respect of such lands as he had in hand or at rack rent, and the several leaseholders and copyholders, entitled to or interested in the same, in proportion to their several and respective shares, interest and properties in and over the said open or common fields or downs. They were also empowered to set out ways and in some respects to direct the course of husbandry. And it was agreed that the persons to whom allotments should be made should be possessed of them for the same estates, terms, and interests, and subject to the same rents and services as the several lands in lieu whereof such allotments should be made were then subject to. Neither the shepherd of the tenantry farmers at that time, nor the pauper Thomas Brown, was a party to the agreement. The arbitrators appointed by the agreement made an award dated the 10th of October, 1818, which has been acted on ever since. By the award, among other allotments, they allotted to W. Beckford, Esq. lord or farmer of the manor of Lower Woodford, in trust for the shepherd or keeper of the common sheep flock of Lower Woodford for the time being, in lieu of lands in the common fields held by custom by the said shepherd, "two allotments of land, (that is to say) one piece of enclosed pasture marked V. containing thirty perches, and one piece of enclosed arable land marked V. containing three roods and twenty-four perches, the shepherd for the time being keeping the fences of the same in repair." This was the land which the pauper took when he was hired as shepherd as above and which had been possessed by former shepherds since the time of the award. The pauper let part of the land to a tenant from year to year for about 5l., and received the rent; a part he always occupied himself, but never paid rates. He is still shepherd, and at the time of his removal was resident in Woodford, and had been so more than forty days. Becoming chargeable he was removed by order of two justices to South Newton, without any objection on the part of his masters, or any interruption to his service, or his possession of the said Shepherd's Croft, both of which he still retains. Lord Tenterden, C. J. "I am of opinion that the pauper took no interest in the land by virtue of the award or allotment. The award itself was void for many reasons. The shepherd therefore could de-

rive no legal interest from it. All the interest which he had, he took in his character of servant from year to year. He was tenant to those with whom he made the bargain, and his enjoyment of the land was in lieu of wages, which would otherwise have been paid him for his service." *Bayley, J.* "I am of opinion that the pauper was settled in South Newton by virtue of the hiring and service for a year. It appears that he was hired for eleven months and afterwards for a month, and then he was hired to go on again on the same terms: that was an indefinite hiring, and therefore a hiring for a year; and as he resided in South Newton the last forty days, he was settled in that parish. The agreement made the 12th of June, 1799, was binding upon those persons who were parties to it. The effect of it was that whenever a shepherd should be appointed he should have an allotment for his own use; it did not operate as a conveyance, but merely as an agreement between the several parties who signed it. As soon as the shepherd was appointed he took the land, not by virtue of the articles of agreement, but by virtue of the contract of hiring. He was hired upon terms and conditions which were pointed out to him: one of them was that he should have Shepherd's Croft, which with the wages of 14s. a week was to make it as good as 16s. per week. The persons who hired him therefore did confer upon him the right to occupy the land for such period of time as he should faithfully perform the office of shepherd. This right to hold the land was founded on his contract with them. The settlement therefore was in South Newton." *Littledale, J.* "It appears there was a custom to appoint a shepherd to attend the flocks, and that person was usually allowed the use of some land. By the agreement of 1799 arbitrators were appointed to divide the waste land, and the allottees were to hold their allotments for the same estates and interests as the lands in respect of which the allotment should be made; but as the lord of the manor, his lessee, and the copyholder and leaseholder, were in the habit of allowing the shepherd a piece of land, I think the pauper did not acquire in this case an interest sufficient to confer a settlement. Suppose there had been an agreement in writing to take care of flocks, and that in lieu of wages, the exclusive use of the land should be given to the shepherd, his interest in the land would be co-extensive with the time during which he was to remain shepherd. During one year therefore (the period for which he was hired) he would be entitled to the exclusive use of the land; but that was not such an interest as would give him a settlement by estate. For that purpose he must be the substantial owner of the property." *Parke, J.* "The sessions have come to the right conclusion. It is said that the pauper took either a legal or equitable estate by virtue of the award. He took neither. The parties to the submission were the Bishop of Salisbury, the lord of the manor, and his lessees of the manor, the leaseholders and copyholders. Now the shepherd was not a leaseholder or copyholder of the manor, nor lessee of the manor. The arbitrators therefore had no power whatever to allot to him, and *pro tanto* therefore the award is bad. He had a right to occupy the land for part of the year; that was not a settlement by estate, but a coming to settle on a tenement under 10*l.* a year, and therefore no settlement was gained." Order of sessions confirmed.

Rex v. Warkworth, 1 *M. & Sel.* 473. Order for removing William Forster from Alnwick to Warkworth confirmed. Case:—The pauper was a freeman by descent, and had been admitted to his freedom twenty-five years. The pasturage of Alnwick Moor is of considerable value, and the freemen of Alnwick, and no others, are entitled to common of pasture thereon, each freeman being entitled when resident, but not otherwise, to the pasturage of five stints of his own cattle, that is five cows, or twenty-five sheep: the freemen have also a right to dig and cut peats, furzes, turves, and bushes; and to get limestone, slates, and free-stones in the open quarries upon that moor: they have the privilege also of setting up their stalls in the market-place without paying stallage to the lord, and of having their children educated free of expense at the town school, at which school two of the children named in the order were placed at the time of the removal. The question was, whether the rights of the pauper as a freeman of the borough of Aln-

2. *Of Estates acquired otherwise than by Purchase, &c.*

Right to a stinted common of pasture for cattle, and to cut peat, and get limestone, &c. never exercised: Held, not to be such an estate as rendered the party irremovable.

2. *Of Estates acquired otherwise than by Purchase, &c.*

wick amounted to an estate from which he was not legally removable. *Grose, J.* "There is no doubt whatever in this case. The question is, whether the pauper was irremovable from his own estate? In order to determine that, we must first inquire what estate he had. Now it appears that he had neither land nor house; it is said, however, that he had a right of common; but supposing he had, it does not appear that he was ever in the enjoyment of or had any cattle wherewith to exercise that right. The profit à prendre, or easement, as it has been called, never existed in him; how, then, can he be said to have been resident on his own? It cannot be considered as a residence on his own, when in truth he never had it. It would be absurd so to consider it." *Le Blanc, J.* "The case made in argument to show that he was residing on his own is this, that he was a freeman of the town, and as such entitled to a right of common on Alnwick Moor, and this common right is said to be a tenement. But I think this is not in strictness a right of common, nor can it properly be said to be a tenement, it is a mere franchise. The argument, however, has been carried this length, viz. that supposing it to be only a franchise, still the pauper was irremovable from it. But to this I cannot accede. In the case, for instance, of a freeman of a corporation, who has a right of suffrage for the election of a mayor, or any other of the officers belonging to the corporate body, has it ever been decided that such a franchise made the person entitled to it irremovable? Here the pauper, as a freeman of the town, was entitled, if he had any cattle, to turn them on the moor. This, however, was a mere personal privilege, wholly unalienable, and not falling within the legal definition of a right of common. A privilege of this sort, I believe, has never yet been holden to be such an estate as to make the person entitled to it irremovable. It is a strong circumstance, that notwithstanding the existence of such rights in different parts of the kingdom, no attempt like the present has hitherto been made. It appears to me, therefore, that this does not fall within the purview of those cases which have decided that a party is not removable from his own; and which doctrine, I admit, has been extended to cases where a party was merely residing in the parish in which his estate was situate, and not upon the estate itself." *Bayley, J.* "The case does not find that the pauper had any house in which he was entitled to reside, and as a freeman he had no right of residence; but that must be acquired by other means. When he can obtain a residence, then as freeman he is entitled during such residence to turn cattle on the common. But when he removes he loses this privilege. I am not aware of any case in which a privilege of this description has been holden to be sufficient to confer a settlement. It is a mere local privilege, and attached to the person so long only as he is resident. From the frequency of these rights, which exist in many corporations in the kingdom, settlements must have been claimed in respect of them had they been deemed sufficient for that purpose. This case is very different from the cases of removals from landed property." Order of sessions confirmed.

Rex v. Belford, 10 B. & C. 54. Order of removal of Grace, wife of John M'Queen, then a prisoner in Berwick gaol, &c. from Berwick to Belford, confirmed. Case:—M'Queen is a burgess of the borough of Berwick, and in 1807 came to reside in Berwick, where he resided to the date of the order, at which time he was a prisoner. For the last three years he enjoyed as burgess certain pecuniary benefits arising out of the estates of the corporation lying in the parish. The mayor, bailiffs, and burgesses of the borough of Berwick, by virtue of a charter granted by James I. and confirmed by statute, hold, to the only proper use of them and their successors, a large estate in land in the parish of Berwick, which is co-extensive with the borough. This estate is chargeable, in the first instance, with the payment of salaries of officers and other corporation expenses imposed by the charter; but has from an early period after the grant of the charter, and from thence hitherto, been distributed into three portions, each applied to distinct purposes. The first consists of farms demised to tenants by the mayor, bailiff, and burgesses, the rent being reserved to them, or their treasurer for the time being, and collected by him. This rent, with the proceeds of other

The burgesses were entitled to receive such share of the rent of the corporate estates as the corporation allowed it. The estates were let by and rent reserved to the corporation: Held, a burgess taking such a share is not irremovable.

property, called the town's ancient revenue, now forms a separate fund, out of which the salaries of the officers and other corporate expenses authorized by the charter are paid; these farms are called Treasurer's Farms. The second portion is subdivided into quantities from one-and-a-half acre to two-and-a-half acres, and in value from 4*l.* to 9*l.* per annum; these are called Meadows; and at an annual meeting, called the Meadow Guild, are distributed, as they become vacant by the death or non-residence of the last occupiers, among the senior resident burgesses and widows of burgesses, who succeed to the rights of their husbands as to meadows and stents, though the charter has no provision in behalf of the widows; the oldest resident burgess being entitled to choose the most valuable vacant meadow, and so on down to the junior; the burgesses may occupy or let the meadows, reserving the rent to themselves. The lands forming the third portion were, up to 1761, open fields, upon which each burgess was entitled to a certain right of depasturing. At that period they were inclosed, and have ever since been let in guild, as farms, to tenants for various terms, and are now leased under the corporation seal; and the rent has, since 1810, been reserved to the mayor, bailiff, and burgesses (the name of incorporation), and successors, or to their treasurer. Previous to that, several instances occur of cases of stent land, wherein the rent was reserved to the mayor, &c. or treasurer, or to the several respective burgesses or burgesses' widows, who should from time to time during the term have shares in the farmhold, in equal portions; the rent of each farm is divided into equal portions, generally eleven, but in a few instances twenty-two. At another annual meeting, called a Stent Guild, a portion is allotted, as a specific farm, to each resident burgess or burgess's widow, or to as many as there are vacant portions; these are called stents, and vary in value from 2*l.* to 9*l.* per annum: the senior burgess is entitled to preference, as the more valuable become vacant. The portion of the rents called stents are paid annually by the treasurer to the burgesses entitled to them; but until the last fourteen or sixteen years the burgesses in many instances received their stent-money immediately from the farmer or lessee of the specific farms upon which their several stents were assigned. The burgesses in guild have, by their charter, a power of making bye-laws for the better preserving, disposing, and letting their lands, and they have made bye-laws to regulate the enjoyment of the meadows and stents, and prescribed the condition of husbandry under which these lands may be tilled, and the terms for which the meadows may be let, by the individual burgesses. They decide on the title of those who claim to enjoy meadows and stents according to such bye-laws, and instances of forfeitures are recorded. Unless there is such a forfeiture, or the party becomes non-resident, or relinquish his stent or meadow by choosing one of more value, he may enjoy the first allotted to him for life. Some enjoy one stent, others two, and others one and a meadow. Those who enjoy two stents hold one in lieu of a meadow. M'Queen for three years previous to his removal has been, and now is, in the enjoyment of one stent, assigned upon a farm within the parish, and annually receives from the treasurer for his portion of the rent 3*l.* 5*s.* 9*d.* He also enjoys another portion assigned on the out-fields, under the description of stent, for a meadow, his share of which is 3*l.* 1*s.* 9*d.* The rents of these two farms, during the entire period of the pauper's share, is reserved to the mayor, &c. or treasurer, and paid to the treasurer, and by him to the pauper. The pauper is not at present entitled to a meadow, but he may claim one when there is a vacancy. The pauper, as burgess, is a member of the guilds, and entitled to vote in the meadow and stent guilds as well as others. The question is, whether the pauper was irremovable, so as to acquire a settlement? Lord *Tenterden*, C. J., "I am of opinion that M'Queen was not seised of any equitable estate, that being in the corporation. He was only entitled to such a portion of the rents as the body corporate might think fit to allow him. Whether they allowed him a portion of those rents, first throwing the whole together, and then dividing them among the freemen; or whether they assigned to each freeman the rent of a particular portion of land, seems to me immaterial. The freemen had no right to enter on the

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land: and in *Rex v. Warkworth* (*ante*, 685) his lordship observed, 'In that case the pauper simply as a freeman had a right to exercise a right of common.' Here the burgesses have no right to occupy the land, the corporation let it." *Bayley, J.* "*Rex v. Warkworth* shows that a burgess entitled to a right of common is not settled by residing in the borough. Being a freeman, and as such entitled to certain local privileges, did not give M^{rs} Queen any estate, legal or equitable; and if he had no estate in the land, he had no right to occupy. The estate was in the corporation." *Parke, J.* "The pauper had nothing but a privilege of taking a portion of the profits of the land, at the will of the corporation." Order confirmed.

2. *The Tenure and Duration of Interest.*

Secondly.—The Tenure and Duration of Interest.

The nature of the tenure is not material, as far as respects the law of parochial settlement. It may be acquired by an estate in lands held in frank tenure, or freehold, (a) or by copyhold. (b) The duration of the estate is also immaterial, if it were sufficient to ensure a residence of forty days. (c) It may be either a freehold or copyhold estate, in fee or for life, (d) or a leasehold interest, determinate on lives (e) or years. (f) The right of a widow to continue forty days upon her husband's lands, until she is assigned her dower, (g) has been held to be an interest sufficiently permanent to confer a settlement.

3. *Of the Value of the Estate.*

The estate need not be of ten pounds per annum, if it be for life, or of inheritance, &c.

Thirdly.—Of the Value of the Estate.

Harrow v. Edgeware, *Fol.* 257; 2 *Bott*, 608. C. having gained a legal settlement in the parish of H., afterwards purchased a copyhold estate for his own life, worth 1*l.* 5*s.* a year, in the parish of E., to which estate he was regularly admitted. He removed from H. to E., and lived on this copyhold estate near five years. His wife was afterwards admitted to the estate, and lived thereon till she died, leaving three children, who became chargeable to the parish, from whence they were removed to the parish of H., and the sessions confirmed the order. *Parker, C. J.* "A parochial settlement is nothing more than the privilege of living irremovable in the parish. (h) A man who has an estate for life, or an estate of inheritance, of his own, cannot be removed from it, although in value it is under 10*l.* a year. It therefore follows that where a man does so live, he gains a settlement for himself and for the children in his family." *Powell, J.* "If this had been the grant of a copyhold for years, it might, as it is under the value of 10*l.* a year, have been within the reason of the statute, but as it is an estate for life, it certainly is not. The father clearly gained a settlement in E. by residing forty days on this copyhold, and the children must of necessity be settled in the parish in which their parents are settled, until they have acquired settlements for themselves, which in the present case they were not of an age to do. The argument respecting the possible inconveniences parishes may suffer from such estates being held to confer settlements, loses its weight, when it is recollected that lords of manors cannot create new copyholds, nor by 31 *Eliz.* c. 7, erect new cottages, without laying four acres of land to each, and it is not much to be feared that lords will give away merely from spleen such quantities of land, especially as the land itself would defeat the intended effect of such grants, by preventing the possessors from requiring parochial

(a) *Rex v. Charlton*, 2 *Bott*, 493; *Cald.* 416; *Rex v. Farringdon*, 6 *T. R.* 520.

(b) *Harrow v. Edgeware*, 2 *Bott*, 465; *Rex v. Burclear*, 1 *Stra.* 163.

(c) 2 *Nolan*, 71.

(d) *Id.* *ibid.*

(e) *Rex v. Tharwood*, *Burr. S. C.* 386; *Rex v. Cold Ashton*, *id.* 444, pauper

certificated.

(f) *Murfiey v. Grandborough*, 1 *Stra.* 97; *Rex v. Uttoxeter*, *Burr. S. C.* 444.

(g) *Rex v. Painswick*, *Burr. S. C.* 783; *Rex v. Long Wickenham*, *Cald.* 474, where the widow was certificated.

(h) This definition is not correct, as a person may be irremovable, and yet not gain a settlement.

relief." *Eyre, J.* "The distinction attempted to be made between being settled and not being removable is imaginary, for a settlement is nothing but the privilege of living irremovable." And accordingly both orders were quashed.

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Fourthly.—The Interest in the Estate, and Who may acquire this Settlement.

It seems that any person may acquire this description of settlement, and even an *alien*, though he cannot acquire a descendable interest, may yet hold till inquest found. (a) So an infant, and other persons under legal incapacity, may acquire the same.

4. The Interest in the Estate, and Who may acquire this Settlement.

1. Of Infants.

Rex v. Hasfield, 2 Stra. 1131. The mother of the children removed had an estate of 4*l.* a year in Tirley, where she and her husband lived and had these children. She dying, the husband became tenant by the courtesy; and whilst such took 30*l.* a year at Hasfield and lived one year there with his two children and then died. The Court of King's Bench confirmed the order removing them to Hasfield as to the girl, but quashed it as to the boy; for as to the boy, who was eight years old, he was tenant in fee of the 4*l.* a year. And though it was not stated that he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it was otherwise; she could demand no maintenance out of her brother's estate; as it was never yet determined that children should go to a grandmother for nurture. She may, indeed, be charged to contribute to their relief in the parish where they are settled.

1. Of Infants.

An infant eight years of age residing in the parish in which it has an estate of its own of only the annual value of 4*l.*, gains a settlement.

2. Executors, Administrators, and the next of Kin.

Rex v. Sundrish, 1 Sess. Ca. 200; 2 Stra. 983. T. Perch, by indenture, demised to T. Gates, the father, a cottage at 5*s.* a year, which was the full value, for ninety-nine years. The lessee held it till his death, and devised it to T. Gates, his son. And the question was, whether the son, as executor, being entitled to the term, shall gain a settlement by inhabiting in such cottage? The court were unanimously of opinion that this estate, though a leasehold, was his own estate; that he had come into it under his father's will; that it is, together with other things, charged with 20*l.*, payable to his mother for her maintenance, and that in *Mursley v. Grandborough*, a leasehold estate, although it was not a beneficial lease of the whole, had been held sufficient to confer a settlement.

2. Executors, Administrators, and the next of Kin.

An executor gains a settlement by residence as such upon leasehold.

Rex v. Uttoxeter, Burr. S. C. 538; 2 Bott, 620. The pauper, W. Gilbert, was settled at Uttoxeter. His mother rented and resided upon a farm of 22*l.* a year at Marchington Woodlands; which she devised to her five children, and made the pauper and her three other sons executors, and died. The pauper alone proved the will and entered as her executor, and resided upon the farm twelve or thirteen weeks. He afterwards returned to Uttoxeter, but continued to go over to Marchington Woodlands, to give directions from time to time, and had a servant upon the farm till the Lady-day following. The question was, whether he thereby gained a settlement at Marchington Woodlands? By the court: "It is very true that a share not amounting to 10*l.* a year, of a tenement of above 10*l.* a year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremovably doth thereby gain a settlement, if he reside forty days."

Coming to a tenement by executorship, although under 10*l.* a year, gains a settlement.

Rex v. Stone, 6 T. R. 295. E. Syms removed from Salt and Enson to Stone. Order confirmed. Case:—The pauper went to live with his father-in-law E. Bentley, in Salt and Enson, who rented from year to year a cottage and about six acres of land, under the yearly value of 10*l.* Bentley died, and by his will gave all his personal estate to the pauper in trust, that he

Value immaterial. The executor to a tenant of an estate under 10*l.* a year gains a settlement by forty days' residence, although he do not prove the will.

(a) *Ante*, 583; 1 *Saund.* 6, 7.

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would allow the testator's wife a sufficient maintenance thereout during her life; and at her decease his personal estate should be divided amongst his five children, the pauper's wife being one: and he appointed the pauper sole executor of his will. Upon the testator's decease, the pauper possessed himself of all his personal estate and continued in possession of the cottage and lands, without coming to any agreement with the landlord, buying and selling every thing, paying the rent, and maintaining the widow until his removal, which was upwards of three years; but he did not prove the will till three days previous to his removal. Lord *Kenyon*, C. J. "I cannot distinguish this case from *Mursley v. Grandborough* (post, 705), and the other cases in which it has been held that an executor or devisee of a leasehold estate, of less value than 10*l.* a year, gains a settlement by residing upon it for forty days. It is said, however, that this pauper was a mere trustee: but no one had a right to take the estate from him; he took it liable to all the testator's debts, and the creditors would have had a right to call on him for payment of their debts before he made any distribution of the testator's property under the will. In fact, the pauper resided on this estate for more than forty days; and the established rule, which we ought to preserve with anxiety, is, that though a person cannot acquire a settlement by a purchase for less than 30*l.* paid, yet if he take such estate by devise, he may: so, though he cannot gain a settlement by renting a tenement of less value than 10*l.* a year, yet, if such an estate devolve on him by operation of law, he may gain a settlement by forty days' residence on it. The distinction taken between a tenant from year to year, and a tenant for a term of years, is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers, and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And, considering how many large estates are held by this tenure, it would be dangerous to say that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although, on my first reading this case, it struck me as a very minute interest to confer a settlement, on consideration I am satisfied that we cannot, without overturning a variety of cases, determine that the pauper did not gain a settlement by residing on it for forty days." *Ashhurst*, J. "It is perfectly immaterial whether the pauper had a beneficial interest in the estate, it being sufficient that he resided there forty days for a necessary purpose, and could not have been removed from it." *Grose*, J. "It certainly seems strange, at first, that an executor should gain a settlement by a residence on the testator's estate, when such a residence by the testator would not have conferred a settlement upon him. But we must consider the difference of the situation of the two persons; the one comes in by his own contract, the other by act of law. This distinction was taken in *Rex v. Ultoreter* (ante, 689)." *Lawrence*, J. "It was settled in *Doe d. Shore v. Porter* (3 T. R. 13), that if a tenant from year to year died intestate, his administrator has the same interest in the land that the intestate had; then what was the interest of the pauper's testator? He had a right to continue on the estate another year, unless six months' notice to quit were given, and, of course, the pauper (his executor) had the same right. With regard to the want of probate, there is a case in 3 *Dyer*, 367*a*, that gives a decisive answer to this: a termor devised his term to another, whom he made his executor, and died; the devisee entered and died without any probate, and it was held that the term was legally in the executor by his entry, and an execution of the devise without any probate. So that if there had been no probate of the will in this case, still the term was vested in the pauper, the executor."

But letters of administration are essential.

South Sydenham v. Lamerton, 1 *Stra.* 57; ante, 669. Held that next of kin of lessee acquires no settlement until he has taken out letters of administration; but see *Rex v. Horsley*, 8 *East*, 405; *Rex v. Okeford Fitzpaine*, 1 *B. & Ad.* 254; post.

Where there are two next of kin in equal degree, and the father being possessed of the residue of

Rex v. Widworthy, *Andr.* 4; *Burr. S. C.* 109; 2 *Bott*, 612. The pauper removed to Widworthy, and lived there with his father in a cottage-house of 30*s.* a year, working as day-labourer. The father died intestate, possessed of the cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of

his father's estate in goods, and the pauper, after the father's death, continued in the cottage for five or six years until the lease was determined; after which, and since the making out the order for his removal, he took out administration to his father." *Page, J.* "At the time of making the order he had gained no settlement in W.; because nothing vested in him before administration was granted to him. If so, then the order for removing him to F. was a good order when made, and the sessions ought not to have quashed it; though administration had been afterwards taken out; for they could not quash a good order upon a matter which happened *ex post facto*; and if this administration really gained him a settlement, there ought to have been a new order of two justices to remove him back to W. When he was first removed from thence he had nothing to do with the cottage; for nothing vested in him till he took out letters of administration; consequently, if he gained a settlement at W. at all, it was gained subsequent to the making of the original order. But secondly, he had it not at all in his own right, even after administration; nor does it seem to be such a sort of estate as would gain him a settlement. This is a cot-house of so small a value as 1*l.* 10*s.* a year only, holden upon the residue of a term of years determinable upon lives. In the case of *Ashbottle v. Wyley* (*post*), there was a continuance of the quiet possession for thirty years and a descent cast. The pauper had a title against all the world except the lord of the waste; and it would be a good bar, even against the lord, in an ejectment. There the pauper clearly had such a possession as to be irremovable from it. But I apprehend that the pauper in the present case was removable even during the term; but afterwards he certainly was." *Probyn, J.* "The whole depends upon this single question, whether the pauper was removable during the five or six years that he lived in this cottage? *for I take the rule now settled and established to be, 'that if the pauper come to an estate by inheritance, or as executor or administrator, be it of ever so small value, he is irremovable; and if he remain forty days in possession and inhabitancy, he gains a settlement.'* Now I take it, that the pauper in the present case was removable. His possession rested only upon a private agreement between him and his brother. If he had taken out administration during the interest, he had had a vested right; but taking out administration after the term expired could never give him an interest in the expired term, in which he had none during its subsistence. He was in possession merely as a tenant at will; he was removable by the parish, and his right would have been without foundation if administration had been granted to any one else. Therefore he had no right at all till administration was granted. The case of *Wyley* was a strong case. That was a descent to the pauper after a possession of thirty years; which is a good title in an ejectment and a presumption of an inheritance. It was *prima facie* a good title as heir at law: none but the lord could contest the right. And if a pauper live forty days under a right which makes him irremovable, it gains him a settlement." *Chapple, J.* was of the same opinion. "For there was no time during the continuance of this lease when the pauper was irremovable, and without remaining forty days irremovable, a settlement could not be gained by him." And he observed, "that there was no agreement at all between the brothers, that the pauper should take this lease as his distributive share; or, at least, no such agreement appeared. It is only stated that the other brother did take his share in goods; and John did live in the cottage; but it does not appear that this happened in pursuance of any preceding agreement that it should be so." (See *Rex v. Cold Ashton*, *Burr. S. C.* 450.)

Rex v. North Curry, *Cald.* 137; 2 *Bott*, 631. Betty Winter and children removed from North Curry to Ruishton. Order quashed. Case:—John Winter, late husband of the pauper, purchased a cottage and garden in North Curry of the yearly value of 20*s.* for fourteen guineas, which was demised to him, his executors, administrators, and assigns, for ninety-nine years, or three lives, at the yearly rent of 2*s.* He and his wife resided in the cottage for several years until his death: his widow and their children soon after became chargeable to North Curry, but were refused relief unless they would go into the workhouse, which they did, and quitted possession of the cottage and

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a term, dies intestate, and after order of removal made for one, he takes out letters of administration, he cannot have a settlement by virtue thereof.

The general rule.

Tenant at will of an estate less than 10*l.* can gain no settlement as such.

Where a wife and two children survive the intestate, the wife cannot gain a settlement by letters of administration taken out after assignment by her of the intestate's term. Lease for years determinable on lives.

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Residence by the daughter of the tenant of leasehold property does not confer a settlement; letters of administration having been granted to the widow.

garden, where they were relieved until they were removed to Ruishton in February, 1781. Ruishton appealed at the Easter sessions, 24th April, 1781, which sessions was adjourned, and Betty soon after returned to the cottage and resided there till 28th April, 1781, when she sold the cottage and garden for six guineas for the residue of the term, and by indenture dated 28th April, 1781, assigned the term. On 11th July, 1781, being the day after the first day of the present session, Betty sued out letters of administration of her late husband's effects. It was argued that there was a difference between the sole next of kin, and where several persons in equal degree have an *equal right*; here the widow had before administration a specific right in the thing, and only a ceremony necessary to make the assignment by her indefeasible. Lord Mansfield, C. J. said, "That this case did not materially differ from *Rex v. Widworthy* (*ante*, 690); as the children were entitled to two-thirds of the effects, the widow is not properly and in the sense of the cases the sole next of kin." (a) Order of sessions quashed.

Rex v. Berkswell, 1 B. & C. 542; 3 D. & R. 9. Order of removal of J. Matthews, wife, &c., from Berkswell to Holy Trinity, Coventry, quashed. Case:—In 1808 a lease for thirty-one years was granted by the lady of the manor, under an inclosure act, to one Hands, of a cottage situate in Berkswell, at the annual rent of one shilling. Hands was residing in the cottage at the time of the lease, and continued to do so afterwards for upwards of a year, when he died intestate, leaving a widow and three daughters, one of whom was married to the pauper. Letters of administration were granted to the widow, but no distribution was made of the intestate's effects. After the death of Hands his widow lived in the cottage for about two years. One of the other daughters, with her husband, resided there for two or three years more, and then the pauper and his wife came, and resided there for some years, and until the period of their removal, with the permission of the widow, she occasionally helping them, and always paying the annual rent of one shilling reserved by the lease. The pauper never paid any rent either to the widow or the lady of the manor. Abbott, C. J. "I am clearly of opinion there was not an equitable interest in this case, which would have entitled the pauper to say to the administratrix, 'I shall come and live in this place, and if you do not allow me so to do, a court of equity will enforce my title.' The pauper had no such right. He was entitled indeed, in right of his wife, to call upon the administratrix to give an account of the estate and effects of the intestate, but it might have turned out that she had paid much more than the value of this tenement in discharging her husband's debts, and in that case he would have had nothing." Bayley, J. "In *Rex v. Toddington*, (*post*, 710) which is the latest case upon this head of settlement, the beginning of Lord Ellenborough's opinion is, I think, decisive upon this subject. His lordship says, 'This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with the legal right to it.' That paragraph shows in what case an equitable interest shall give the party a right to be considered as gaining a settlement in right of it; and my brother Holroyd, in giving his judgment in that case, says, 'An equitable estate is very different from an equitable right to have a conveyance of the legal estate.' In this case it seems to me, that the pauper had no right at all to go into a court of equity to have a specific portion of this estate decreed to him, or to be admitted to reside upon the premises." Holroyd, J. "I am of opinion that the pauper in this case had not any equitable right to enjoy the property in question. He was entitled to his wife's share, assuming that the testator's effects were sufficient to pay it, but I think he had no right to enter and take possession of the cottage without the assent of the administratrix, nor even then, if she disposed of the possession, without reserving the powers given to the ordinary under the statute of distributions."

(a) Can the widow be even sole next of kin in such a sense as to be entitled to letters of administration? By 21 Hen. VIII. c. 5, administration is to be granted "to the widow or next of kin as by the discretion of the ordinary is good." The court, it is true, prefers a sole to a joint administrator. (4 Burn Ec. L. 277, 278.)

Order of sessions quashed. (See *Rex v. Cold Ashton*, Burr. S. C. 450, *post*).

Rex v. Great Glenn, 2 Nev. & M. 91; 5 B. & Ad. 188. Removal of M. Stevens and children from Great Glenn to Leir, both in the county of Leicester. Order quashed. Case:—The pauper Stevens was married to John Stevens in April, 1827; and on their marriage she and her husband went to live in a house in the appellant parish, which her husband had taken of Thomas Eaglefield as tenant from year to year, at the rent of 3*l.* per annum, which was a rack-rent. They continued to live in this house until the 14th of May, 1831, when the husband died. The widow (the pauper) continued the possession from thence for about a fortnight or three weeks. She then went to the respondent parish for a few days, viz. from Monday till Saturday, when she returned to Leir, having left her sister in possession of the house during her absence. She was relieved there by the respondents until the 3rd of December following. On the next 2nd of June after her husband's death the pauper had an interview with the landlord, and told him she wished to pay the rent weekly; he assented, and it was agreed that the pauper should pay 1*s.* 2*d.* per week, which she paid accordingly until the 5th of March, when she quitted in consequence of having received a week's notice to quit. Some time in August after her husband's death, the pauper took out letters of administration to the effects of her husband under the following circumstances. The attorney for the respondent parish, accompanied by a clergyman, in that month called upon the pauper and administered the oath, saying, "We shall be obliged to get you to take out letters of administration: I dare say you don't understand it. You have a right to take out letters of administration if you like, and if you will leave it to me I will do whatever is necessary." This explanation was not understood by the pauper. However, she said she had no objection, but hoped they would not take her goods, which she believed the respondent parish were going to lay claim to. The pauper was ignorant of administering any further than she understood her oath was to declare that what she had was not worth 20*l.*; and she never heard until the 6th of December following that letters of administration had been taken out, when the attorney for the respondent parish having laid some papers on a table before her, said, "Those are your letters of administration." The pauper's goods at the decease of her husband were not worth more than 5*l.*, 3*l.* of which were due for rent, and 2*l.* for other debts. The letters of administration were taken out by the direction and at the expense of the respondent parish for the purpose of settling the pauper in the appellant parish. The pauper resided forty days and upwards in the house late her husband's in the appellant parish after the grant of the above-mentioned letters of administration, whereupon the order of removal appealed against was obtained. The court of quarter sessions found that there was fraud in taking out the letters of administration, and discharged the order. *Denman*, C. J. "The pauper, as administratrix of a tenant from year to year, though at a less rent than 10*l.*, would gain a settlement by forty days' residence, because the interest vested in her by act and operation of law. The only question as to this point is whether the settlement is altogether void, because the sessions have found that there was fraud in taking out the letters of administration. They have stated the facts on which that finding was grounded; and I am of opinion that there was not in this case any fraud sufficient to prevent the estate of the intestate from vesting in his widow. She not only had a right, but was bound to take out letters of administration; and she consented that they should be obtained. There is no ground for saying that they should not have their full legal operation of vesting in her the property of the intestate. Another question is, whether she resided in the parish forty days while the leasehold estate (formerly her husband's) was vested in her. There are premises from which the sessions might have inferred an agreement by her, after administration granted, to become a weekly instead of a yearly tenant. They have not drawn any such inference; but have left it doubtful whether she resided forty days in the parish of Leir, while the leasehold estate which formerly belonged to the husband was vested in her. If that be really a matter of doubt, the case must go back to the sessions in order that they may

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The husband of the pauper rented a house from year to year, and on his death the pauper told the landlord that she wished to pay the rent weekly, which she continued to do for nine months. The respondent parish had relieved her in the meantime, and the attorney of that parish suggested her taking out letters of administration, and did so for her. Held, that as the widow was bound by law to take out administration, it was not to be considered a fraudulent transaction, although the sessions had so found it. But it was referred back to the sessions to say whether after administration granted she continued a weekly tenant, or was tenant from year to year in her husband's right.

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determine it." *Littledale, J.* "I think that under the circumstances stated in this case the leasehold interest of the husband was not prevented from vesting in his widow, on the ground that the letters of administration were fraudulently obtained. She was not only entitled but bound by law to take them out; and was merely told by the solicitor to the parish of Leir that she was so entitled, and assented to administration being obtained. There was no misrepresentation or suppression of any fact. The only other question is, whether she resided forty days in the parish of Leir after her husband's interest as tenant from year to year had vested in her as administratrix. If within that period she held as a weekly tenant, and continued to do so ever afterwards, she was not irremovable. It is stated that on the 2nd of June she told the landlord she wished to pay the rent weekly, and that he assented; but whether she then actually took the premises from week to week, or only gave notice to the landlord that she wished to do so, is not very clear. I should rather think she then became a weekly tenant. It is true she could not surrender her husband's interest before taking out administration, but as the facts are left doubtful the case must be sent back to the sessions, in order that they may say whether after taking out administration she was a weekly tenant in her own right, or a tenant from year to year in right of her husband." *Parke, J.* "I should be satisfied to dispose of this case on the ground that the sessions had found (as I think they would) that the pauper, before the letters of administration were taken out, had become a weekly tenant in her own right and continued so afterwards, and consequently that she did not reside forty days in Leir while she was irremovable by reason of the estate which had vested in her by operation of law. She paid the rent weekly from the 2nd of June, 1831, to March, 1832, and quitted on a week's notice. As soon as she obtained the letters of administration she might have disaffirmed the weekly tenancy and claimed to hold as tenant from year to year in right of her husband; but I think there is abundant evidence of her having confirmed the weekly tenancy, for she afterwards always paid the rent weekly, and quitted on a week's notice. Then as to the other question, there were no sufficient premises to warrant the sessions in finding such fraud as would avoid the letters of administration and prevent the leasehold estate of the husband from vesting in his widow. The pauper had a right to take out letters of administration, and a consenting mind that it should be done. She was only induced by the solicitor for Great Glenn to exercise that right, but there was no deceit practised by him; if there had, the case would have been different." *Patteson, J.* "In order to acquire a settlement by estate the pauper must have resided forty days in the parish where the estate lay, and where her interest in that estate by operation of law still continued. If before that time elapsed she acquired an interest in her own right as weekly tenant, and resided in the parish in respect of that interest, she was not irremovable, and acquired no settlement. The sessions probably find on the evidence that she had become a weekly tenant. The letters of administration are not void on the ground that they were obtained by fraud, because the widow had the right, and indeed was under a legal obligation to take them out, and consented that they should be taken out." Case to go back to the sessions in order to ascertain whether the pauper became a weekly tenant within forty days after the letters of administration were taken out.

A sole next of kin has such an equitable interest in a leasehold tenement of the intestate, that she gains a settlement by residing forty days in the same parish after the intestate's death, before administration granted to her. And it matters not that the widow of the in-

Rex v. Horsley, 8 East, 405. Removal from Horsley to Avening, quashed. Case:—The pauper, S. B., was the widow of J. B., who died in 1801. W. P., the father of S. B., died about Christmas, 1802, intestate, possessed of a leasehold house in Horsley, of 40s. *per annum*, for a term of years, leaving a widow and the pauper his only child, whom he had by a former wife. W. P.'s widow died about a month after her husband. Upon the death of W. P., the pauper, who had previously occupied the leasehold house by permission of her father, continued to reside in it till the death of her mother-in-law, when she left the house, and let it to a tenant, who occupied it for three years from that time, and paid the rent for it to the pauper. The pauper during this time, and until the date of the order of removal, resided with her family in Horsley. On the 11th of January, 1806, the

pauper obtained letters of administration to her father, and on the 29th sold her interest to W. D., who ever after continued in possession. The court said, the grant of administration could not operate by relation to make a person irremovable for a time past, who during that time was removable. On the other point, Lord *Ellenborough*, C. J. delivered judgment as follows, on a subsequent day. "This is the case of a *sole* next of kin exclusively entitled, after the death of her mother-in-law, to administration of the personal estate of the intestate, her father; and the question is, whether the pauper, having, after she became such *sole* next of kin to the intestate, resided more than forty days in the parish, in which a leasehold tenement of 40s. *per annum* belonging to the intestate lay, thereby gained a settlement in that parish. The grant of letters of administration cannot operate for the purpose of rendering her not removable at a time past, when, as far as the letters of administration are concerned, she was removable for want of them; and when any order which might have happened to be made for her removal, (as no letters of administration then existed), could not, as was held in *Rex v. Widworthy* (*ante*, 690), be quashed afterwards upon the subsequent grant of them. Can then a person *for this purpose* become the owner of a chattel real, which had belonged to the intestate before the actual grant of administration to such person? Upon the death of her mother-in-law the pauper became *sole* next of kin to the intestate; it was in her power, therefore, at any moment afterwards, to have clothed herself exclusively with the legal character and rights of an administratrix. Lord *Mansfield*, in *Rex v. Cold Ashton*, observes that there is 'a great difference between a *sole* next of kin, and where several persons in equal degree have all of them (as in that case they had) an equal right.' In *Rex v. North Curry* (*ante*, 691), Lord *Mansfield* again observed, that the widow (the pauper in that case) 'was not properly, and in the sense of the cases, the *sole* next of kin.' The effect, however, of a forty days' residence by a *sole* next of kin has never yet received a judicial opinion. *South Sydenham v. Lamerton* (*ante*, 669,) was argued and decided on another ground. Adverting to the intimation given by other judges, of what would be their opinion upon such a case as the present, if it should come before them, and to the reason of the thing, according to which the exclusive right to enforce the proper means of acquiring a legal title to the property, coupled with the actual enjoyment of it in the meantime, through the occupation of a tenant, gives so much colour of right to reside without being removed within the parish in which the property is situate, as to exempt such residence from being considered as a vagrant intrusion into a parish, in which the party has nothing of *his own*, within the purview and scope of the poor laws, and to the determinations thereupon; we are of opinion that in a case in which the language of no statute upon the subject precludes us from so determining, and where no principle of convenience, nor any decided case, is contravened by such a determination, we are well warranted in considering that a settlement was gained by a residence of forty days within the parish, in which a pauper thus circumstanced in respect to the real property there situate, resided; and of course that the order of sessions must be affirmed."

Rex v. Camford Magna, 6 M. & Sel. 355. Order of removal of R. Poulden, from Camford Magna to Corfe Mullen, quashed. Case:—Richard, the father of the pauper, about thirty-nine years ago, lived in a house of White, at Corfe Mullen, whose daughter, Ann, he married. The house was held by White, under a lease for years determinable on lives, one of which is still subsisting. Its yearly value is 40s. White died about thirty-six years ago, leaving a widow, and Thomas and Ann, his children. It did not appear that any administration had been taken out. The widow and Richard and his wife were all living in the house when White died, and continued there afterwards—the widow until her decease, about six years ago, and Richard and his wife to the present time, they being, after her decease, in the sole occupation. The house is one tenement. No rent was ever demanded or paid but the quit-rent, and that by Richard. Thomas White lived close to the house. Lord *Ellenborough*: "The presumption raised in *Rex v. Cold Ashton* (*Burr. Sett. Cas.* 450, *post*; and see *The King v. Okeford Fitzpaine*, 1 Bar. & Adol. 251), was, that the pauper and his wife had agreed

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testate survived him, if she died afterwards without having taken out administration, leaving the other *sole* next of kin to the intestate. But no settlement is gained by the mere relation back to the death of the intestate of the letters of administration when granted, taken out only eighteen days before the next of kin parted with her interest in the leasehold; so as to connect the residence for those eighteen days with a residence by such next of kin in the same parish for more than forty days, after the deaths of the intestate and his widow, before such administration granted.

Letters of administration have no retrospective effect.

The widow, daughter, and son-in-law, occupied a leasehold house of the husband for more than thirty years, no administration taken out: neither of them gained a settlement.

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with the other children for their shares: no such presumption has been drawn here; nor do I think the case admits of it. There is not any circumstance from which to infer an abandonment by any of the parties to the others of their right. According to the facts, there was neither exclusive right nor exclusive possession. Had there been a sole occupation, I am not prepared to say it would have been enough in the present case, although it may be in the case of a sole next of kin. *Abbott, J.* said, "In order to determine in favour of a settlement, it must be presumed either that administration was granted to Richard, his wife, or the widow. Are we at liberty to make such a presumption? The sessions are judges of the fact and law. They have not done it, and, in my opinion, they have done right; for the acts and conduct of the parties must be taken together before any presumption can be raised; and we find from these, (so stated in the case,) so far from a presumption arising that the father was settled in Corfe, that about fourteen or fifteen years ago he received relief from Canford, being resident in Corfe. The sessions therefore could not do otherwise than conclude that at that time Richard had not acquired a settlement in Corfe. (See *Rex v. Okeford Fitzpaine*, 1 Bar. & Ad. 254; *Rex v. Geddington*, 2 Bar. & Cres. 129, post; 3 Dowl. & Ryl. 403, S. C. post; *Rex v. Long Bennington*, 2 Bar. & Cres. 132.)

3. *Trustee and Cestui que Trust.*

Where an estate was devised to a wife during her widowhood, and then to be sold for the benefit of the children; one of them, after the death of the widow, continued to live therein, and gained a settlement.

3. *Trustee and Cestui que Trust. (a)*

Rex v. Natland, Burr. S. C. 793. T. Gibson and his wife were removed from Natland to Stainton. Order quashed. Case for the opinion of the judge of assize, and agreed to be determined by his opinion. Allan Court, by his will, devised his estate at Natland to his wife during her widowhood, and after the determination thereof to trustees to sell, and divide the money equally among his children, of whom the wife of the pauper was one. The testator died, the widow entered and let part of the estate to farm, reserving to herself a dwelling-house, which was worth about 30s. a year. The pauper being reduced in his circumstances, came with his wife to live with her mother, the widow, in part of the dwelling-house: the widow died in June, 1769, the pauper and his wife continuing in possession of that part of the dwelling-house. In about a month after the death of the widow the trustees contracted for the sale of the estate, and in February following a conveyance was executed, the children of the devisor being no parties thereto. The pauper paid no rent to the widow; but, from her death, he paid rent to the purchaser until May-day following, when he quitted the premises. Upon this it was insisted that as the pauper and his wife inhabited in Natland in part of the house devised as aforesaid, from her mother's death, in June, till the same was conveyed in February following, and she being entitled to a distributive share of the money to be raised by sale of the said devised premises, the pauper was not removable during that time, and, consequently, gained a settlement in Natland. The opinion of the judge was given in writing in these words, "I have heard counsel on both sides, and am of opinion the settlement is in Natland. H. Gould." Afterwards a rule was obtained in K. B. to quash the order. But it was objected against the court's entering at all into the matter, for the judge having heard counsel and given his opinion in writing, this ought to be final, otherwise no judge of assize will ever hereafter accept a reference of this kind. The court saw it in the same light; and Lord Mansfield, C. J. observed, that here was a manifest consent of the parties to this reference to the judge, and therefore it was, like all other reference, by consent. He intimated that, as at present advised, he was of opinion with the judge; however, after this consent, he thought it very improper to take the matter up again.

Reference to judge of assize.

Though estate be devised for sale, yet if one of the devisees take it by agreement with the others, he gains a settlement.

Rex v. Wivelingham, Doug. 767. Robert Bittany, late husband of the pauper, Mary Bittany, came with a certificate from Haddenham to Wivelingham. Elizabeth Bittany, by her will devised her estate at Wivelingham to trustees to be sold, and the money arising from the sale to be divided be-

(a) As to the equity of redemption, see *Rex v. Cregrina*, 4 Nev. & M. 455, post, 713, *Estate in Mortgage*.

tween Robert and three daughters of William Bittany. They agreed among themselves that Robert should have the real estate, and the three daughters the personalty amongst them; whereupon the trustees conveyed the real estate to Robert, (a) who entered and resided thereupon several years. It was insisted, that Robert had taken no interest of any kind in the lands by the will, neither legal nor equitable. He had only a right to call upon the trustees to sell the estate, and distribute the money arising from the sale. On the other hand, it was argued that Robert had clearly an equitable title under the will; all the parties had agreed that the trustees should not sell; and that it was clearly settled that a residence on one's own estate, coming either by descent or devise, whether the legal interest be coupled with the equitable or not, and whatever the value is, will gain a settlement, and discharge a certificate. Lord *Mansfield*, C. J. mentioned *Roper v. Radcliffe*, (9 *Mod.* 167, 181,) to show that a devisee of the surplus arising from the sale of lands, after payment of debts and legacies, has an equitable interest in the lands themselves, it being in his option to pay the debts and legacies, and keep the land. *Willes*, J. said, "The same question in this case had occurred in *Rex v. Natland*, (*ante*, 696,) which was referred to Mr. J. Gould, who decided that a settlement was gained; and that his opinion had been recognised by the court, and in the present case the court were unanimous, that Robert hereby vacated the certificate, and consequently gained a settlement."

Rex v. Darlington, 5 *M. & Sel.* 493. Order for removal of Elizabeth, widow of Meriton Sedgwick, from Brompton to Darlington, confirmed. Case:—Mary Sedgwick devised a dwelling-house, with appurtenances, in Brompton, to the use of G. Jackson and W. Marwood, in trust for her niece, M. A., daughter of her brother, Meriton Sedgwick, with remainder to three of his children. She also devised her other messuages and real estate, situate in Brompton, and all her personal estate, after payment of her just debts and funeral expenses, to the trustees, in trust, to receive and pay the yearly proceeds thereof, for the benefit of her brother, his wife and children, all or any of them, during his life, as they should think proper; and she appointed the trustees her executors. The testatrix died on the 20th of June, 1815, and upon her death, Meriton and his family went to reside at Brompton. Meriton S. did not occupy any part of the premises devised in trust for him, but he occupied, by permission of the trustees, another cottage, worth 3*l.* or 4*l.* *per annum*, part of the property of the testatrix, devised in trust for M. A. Sedgwick, and resided therein from June, 1815, until his death on the 28th of December following. Meriton S., at the time of the testatrix's death, and also at his decease, was an uncertificated bankrupt. *The personal estate of the estate, and the rents and profits of the premises, were insufficient for the payment of her debts, and the trustees did not pay or appropriate any part of the rents or profits for the benefit of Meriton S. or his wife, or any of their children, during the life of Meriton, the same being applied to the discharge of the testatrix's debts; and a considerable portion of debt remained undischarged at the time of Meriton's decease.* The question was, whether Meriton took under the devise such an interest as enabled him to gain a settlement by his residence at Brompton. Lord *Ellenborough*, C. J. "It was evidently the purpose of the testatrix, knowing probably that her brother, Meriton, was an uncertificated bankrupt, to abstain from giving him any vested interest, and therefore she leaves this matter entirely in the control of the trustees. After hearing the argument, I am clearly of opinion that there is not a scintilla of interest in Meriton, either legal or equitable, which entitled him to reside irremovably in the parish. He was only one of several persons to whom the trustees might, in their discretion, have given the rents, if there had been any to dispose of." *Bayley*, J. "The only question submitted to our consideration is respecting the interest of Meriton, as to which, it seems to me, that it is only by losing sight of the real question that

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A devise to the use of trustees in fee, in trust (after payment of debts), to receive the rents for the benefit of her brother, M. S., his wife and children, all or any of them, during his life, as they should think proper, and, after his decease, in trust for her nephew, &c. : Held, that M. S., who, after the death of testatrix, by permission of the trustees, occupied until his death a cottage in the township where the lands devised were situate, did not acquire a settlement thereby; the rents and profits of the lands having been insufficient to pay testatrix's debts; and M. S., at the testatrix's decease, and from that time until his own decease, being an uncertificated bankrupt.

(a) This was not considered as a purchase of the estate by Robert; for as he resided at W. under a certificate, he

could not, by the purchase of lands, &c. acquire a settlement.

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A leasehold cottage is devised to A. P., with liberty to the paupers to dwell therein during their lives; by residence under the will they gain a settlement.

W. S., a schoolmaster, occupied a school-house, yard, &c., under trustees appointed by will, and directed to appoint such master: Held, that the appointment gave W. S. a life interest therein, and a settlement by forty days residence.

any doubt can be raised. The foundation of this head of settlement is, that a man is not to be removed from his own. But here the trustees had the estate; first, for the payment of debts, which they were unable to pay in the life-time of Meriton, and consequently were not in a condition to empower him to take any thing." *Abbott, J.* "If Meriton had taken an equitable interest the intention of the testatrix would have been defeated; because whatever he took, being an uncertificated bankrupt, it would have passed to his assignees." Order confirmed.

Rex v. Woburn, Burr. S. C. 680; 2 Bott, 528. The paupers (two sisters) resided at E. under a certificate from Woburn. A person entitled to a long term of years in a cottage in Eversholt, after having devised it to Andrew Powell, son of their father William Powell, adds, "it is also my will and pleasure that William Powell (their father), his wife and children, shall have free liberty and power during their life to dwell in it." And accordingly, W. P. and his wife, and their son A. P., and the two daughters, (the paupers) resided in it till W. P.'s death. The court held clearly that the settlement of the two paupers was in Eversholt.

Rex v. Owersby-le-Moor, 15 East, 356. Mary, wife of William Saltfleet, deceased, schoolmaster, was removed from Maltby to Owersby-le-Moor. Order confirmed. Case:—In 1705 Mrs. Bolle devised a farm in Maltby-le-Marsh to certain persons and their heirs, in trust, that they should employ the rents as follows, viz. yearly to the poor of the town 40s., and the rest of the rents of the farm should be yearly paid to a fit person, to be *nominated and elected by the trustees*, who should be a *schoolmaster*, to teach the poor children of Maltby to read the Bible. On June 13, 1807, the following agreement was entered into between William Saltfleet and James Digby and Catherine Digby his wife (the heir-at-law of the only surviving trustee appointed by the will.) "Memorandum of an agreement made 13th of June, 1807, between J. D. and C. D. his wife, of the one part, and W. S. schoolmaster of the other part; Whereas J. D. in right of his wife is entitled to a school-house, &c. situated at Maltby, which they have agreed to let unto W. S.: W. S. shall have the possession and the use and occupation of the school-house, yard, garden, and premises, for the purpose of teaching the poor children of M. to read in the Bible, pursuant to the will of Mrs. B.; and in consideration of W. S. agreeing to teach children, &c., he is to reside upon the premises rent free, and to be paid by J. D. and C. his wife, a salary for the first year that he shall so teach, of 10*l.*, such year to commence from the 1st August next, and 15*l.* for every year after. [Then a covenant by D. to pay as aforesaid. Then further agreement, that in case any reasonable complaint shall be made to J. D. and C., &c., it shall be lawful for him, &c., to suspend the salary of W. S. for two years, and apply the same to such purposes as J. and C. D., &c., shall think proper, without being liable to make any remuneration to W. S. In case of the death of W. S., it shall be lawful for J. D. and C. his wife, to turn out from the premises the executors of W. S., and to appoint another person to the situation of schoolmaster thereto, in such manner as he, &c., may think proper.] W. S. (June 13, 1807,) entered upon the school-house, &c., being part of the farm so devised in trust, and resided upon those premises till his death, about three years and a half afterwards. He taught the children to read during that time, and received from J. D., for the first year, a salary of 10*l.*, and afterwards a salary of 15*l.* per annum. The annual value of the school-house, yard, and garden, is about 5*l.* The remainder of the devised premises, consisting of a farm-house and twenty acres of land, was occupied by C. Barton, the tenant of J. D., at the rent of 52*l.* 10s. per annum. The court of sessions thought the above appointment fraudulent, and in no respect consistent with the will. *Per Curiam*: "We are of opinion that a settlement was obtained in Maltby-le-Marsh. The agreement of the 13th June, 1807, was we think in substance an appointment of Saltfleet to the situation of schoolmaster, to teach the poor children of Maltby to read the Bible: and though the sessions have stated that that appointment was fraudulent, and in no respect consistent with the will of Mrs. Bolle, it is clear that their meaning is not that it was a colourable appointment, under which

he was not to discharge the duties of schoolmaster, but that it was an appointment upon such terms as tended to deprive him of a great part of the emoluments attached to the situation. There was no fraud in him: he was to discharge every duty the situation of schoolmaster required; but the fraud was in those who appointed him, in attempting to withhold from him what Mrs. Bolle's will entitled him to receive. By that will the schoolmaster was to have all the profits of a farm at Maltby, except the yearly sum of 40s., which was to be paid to the poor of the parish. The schoolmaster therefore for the time being was, to a considerable extent, to the extent of all but 40s. a year, the *cestui que trust* of the farm; and had the trustees kept in their own hands sufficient to raise the 40s. a year, and put the rest into the possession of the schoolmaster, they could not have dispossessed him whilst he continued schoolmaster, unless he had misused the property, or unless what they retained to raise the 40s. a year had proved insufficient for that purpose. In this case the trustees allowed Saltfleet to have the possession of a house, yard, and garden, which were part of this farm, and they retained what was greatly more than sufficient to answer the 40s. a year. He had this possession therefore not by purchase, so as to be within the statute 9 Geo. I. c. 7; not by renting, so as to be within the statute 13 & 14 Car. II. c. 12; but in the character of a *cestui que trust*, residing upon what was for the time substantially his own; and as the trustees could not have removed him, we are of opinion that this residence for more than forty days gave him a settlement in this parish." Orders quashed.

Rex v. Melborne, Burr. S. C. 244; 2 Bott, 239. The pauper's husband, during his residence at Melborne, officiated as schoolmaster there. During his continuance in the school, certain lands were by deed indented and inrolled conveyed in trust to permit certain persons, being vicars of certain parishes and the succeeding vicars, to take the profits thereof, to employ the same for certain purposes: one of which was as follows: "Also the yearly sum of 10*l.* to the charity school of Melborne, to be paid to the vicar for the time being." This sum was yearly received by the pauper's husband from the vicar of Melborne. It was held that this annuity of 10*l.* per annum did not appear to be appropriated to the schoolmaster, and that he had no freehold in it, and could therefore gain no settlement by receiving it.

Rex v. Holm East Waver Quarter, 16 East, 127. Removal of Jane Anderson, single woman, and her child, aged five years, from Holm E. W. Quarter to Aicton, confirmed as to the child, but quashed as to the mother. Case:—Jane Anderson's father, Daniel Anderson, purchased an estate for less than 30*l.* in Holm and died, having devised it to a trustee in trust to let the same to farm during the life of his daughter, and to pay her the rent; and after her death to his right heirs. The pauper J. A. continued to reside upon the premises for more than forty days after the death of her father, the trustee never having interfered. Lord *Ellenborough, C. J.* "This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing upon the rule, that a man shall not be removed from his own while his trustee permits him to occupy it, and from which nobody else had a right to remove him. Here the pauper did not reside in the character of a tenant: and whether the estate here were legal or equitable, it was still the pauper's own, and she could not be removed from it." Orders confirmed.

Rex v. Thruscross, 3 Nev. & M. 284; 1 Ad. & E. 126. Removal of J. Fryer from Thruscross to High and Low Bishopside, both in the West Riding of Yorkshire. Order discharged. Case:—The pauper's grandfather was the devisee of a copyhold estate in High and Low Bishopside, under the will of one Furniss. On the death of the deviser in 1780, the grandfather took possession of the estate under the devise; and the pauper's father, then about sixteen years of age, lived with him there as a member of his family till 1789, when he married; but the grandfather was not admitted tenant of the property in question before the year 1790. To prove a surrender of the copyhold to the use of Furniss's will, the steward of the manor was called, who produced the book of the records of the manor, and read from it a record of the admittance, reciting a surrender of the property in question,

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The rent must be appropriated to the schoolmaster, and not generally to the school.

A father devised a cottage and land purchased for less than thirty-pounds, in trust to be let to farm during the life of his daughter, and to pay her the rents after deducting expenses: Held, that by forty days' residence thereon by permission of the trustee, the daughter gained a settlement.

A record in the record book of a manor of an admittance to a copyhold, reciting the surrender of the same to the use of a will, is admissible evidence of such surrender, the original surrender being lost. Devisee of copyhold was admitted after he

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had resided forty days thereon, and his son who had previously lived with him, became emancipated after the expiration of the forty days, and before the admittance. Held, that the father by such residence gained a settlement, which was communicated to the son. *Parke, J., diss.*

made in 1774, to the use of the will. He also stated that he had not been able to find the surrender itself upon the roll or elsewhere, except as recited in the admittance: that the old surrenders appeared to have been kept in a very loose and irregular manner; that the originals were very often not to be found; and further, that there were many surrenders to the use of wills on the records, the originals of which were not to be found; but that he had not been able to discover any other instance in which there was not either the original surrender itself, or a record of a surrender on the court rolls. The questions for the opinion of the court were stated to be, whether, under these circumstances, the entry in the book of the records of the manor was evidence of a surrender to the use of the will? whether the admittance of the pauper's grandfather in 1790 had relation back to his possession in 1780? and, whether the residence of the grandfather for more than forty days, he having the right of admittance, was sufficient to confer a settlement by estate? Lord Denman, C. J. "I think this case is clear of doubt. The principle is, that a man is not to be removed from that which he has a right to enjoy. Here the pauper's grandfather had a right to enjoy the copyhold without being removed by the parish officers. I think the overseers, if they had presumed to remove him, would have been liable to an action. In several cases an interest as feeble as this has been held sufficient for a settlement." *Littledale, J.* "I think that the admission relates back to the time of the deviser's death for this purpose as well as others. I agree that the grandfather had not an actual estate at the time of the emancipation; he could not then have devised at law or equity. He was a mere occupier. Still he was an occupier who, by doing an act which he might at any time do, could have obtained the legal estate. The lord could have ejected him, but only for a short time; for he might immediately have claimed admittance. He had the substantial power over the land. And although the lord or the heir-at-law might have removed him for a time, the officers of the parish had no right to do so; and if so, he became settled by forty days' residence under such circumstances." *Parke, J.* "I am not prepared to concur with the Lord Chief Justice and my brother Littledale, and should have wished for more time to consider the case. As at present advised, I think there was no settlement in the appellant parish. The question of evidence is disposed of: we must take it that a surrender to the use of the will is found by the sessions. The question then is, whether a settlement was gained by the grandfather before the pauper's father became emancipated. In the first place, there can be no doubt that admittance has relation back for some purposes, as to enable the devisee to avoid mesne incumbrances by another party. That relation, however, will not, in my opinion, operate so as to make the possessor irremovable in the mean time; he must have an interest before the admittance sufficient to make him irremovable. Then was the pauper's grandfather in this case removable in the meanwhile? He ought to have had a legal or an equitable estate; but that is not the condition of a copyholder before admittance. The law enables him to enforce a devise made in his favour; but he is not even obliged to accept such a devise. No case has yet gone so far as to allow a settlement to be created by that which is neither a legal nor an equitable estate." *Patteson, J.* "It appears to me that a settlement was gained by the pauper's father. It is true that he had no legal or equitable estate. That is, however, not absolutely necessary, according to *Rex v. Holm East Waver Quarter* (16 East, 127; ante, 699). Where a party can enforce the conveyance of a legal estate, and is in the occupation of it, that is sufficient to confer a settlement. Here the devisee had that right, and no one else had. He might have taken legal proceedings to compel the lord to admit him; and after he had enforced the admittance, he might have ousted the heir. Though I cannot find any case in which the court has professed to go the full length of this case, I think we may collect the principle that such an interest is sufficient. In *Rex v. Holm East Waver Quarter* there was neither legal nor equitable estate, though it is true that by the language of the court the decision seems to have turned on the notion that there was an equitable estate. It was held that an occupation, not as tenant, by permission of the trustee, as if the property had been the occupier's

own, was sufficient to give a settlement. There the property was not the occupiers, nor could she have compelled a conveyance by any proceeding in equity. The facts of that case go further than those of the present. As to the first point, there can be no question but that the evidence was admissible." Order of sessions quashed.

2. *Of Estates acquired otherwise than by Purchase, &c.*

4. *Estate in Remainder or Reversion.*

Rex v. Eatington, 4 T. R. 177. Order of removal of John Harris from Eatington to Hooke Norton quashed. Case:—The pauper married the daughter of G. Malings. After the marriage, to induce the pauper and his wife to reside with, and take care of him, by lease and release he granted a cottage to the pauper in fee, with this proviso, "that Malings was to live in and occupy the cottage as he had done, and then did, for his life." The pauper paid nothing for it. The premises were then worth 30*l.* The pauper resided with Malings up to the time of the order. Lord *Kenyon*, "The mutual question is, whether an immediate estate in possession was vested in the pauper? for it is admitted, that unless an estate of present interest was conveyed, the pauper gained no settlement. If this had depended on the first words of the proviso, I should have thought that they would have been satisfied by determining that only a liberty to inhabit the cottage was reserved to the father; but the word 'occupy' carries it further, and shows that the whole estate was to be reserved to him. If such be the construction, the estate in remainder was not come into possession when the order was made, and consequently the pauper had not that which confers a settlement, viz. a present interest." *Ashhurst*, J. "The word 'occupy' shows that it is a reservation of the thing itself, of the whole estate; for a license to occupy an estate for a particular time is a lease of the whole estate for that time."

A remainder man must have a *present* interest to render him irremovable.

Rex v. Houghton-le-Spring, 1 East, 247. Removal from South Shields to Houghton-le-Spring confirmed. Case:—The pauper became entitled as heir to three copyhold houses, let at 6*l.* per annum, and to one freehold house at Sedgefield. Upon becoming so entitled, he let to R. W. the freehold house at 3*l.* per annum, the pauper undertaking to sink a cellar, and make some repairs in the premises. W. entered and occupied. The pauper, in pursuance of such agreement, went, after W. had possession, from Houghton to Sedgefield, for the sole purpose of sinking the cellar, and making the repairs. He was occupied upon the work for forty days, during the whole of which time he resided as a lodger in W.'s house. After finishing the work he returned to Houghton to his father, with whom he lodged. During the whole of the pauper's residence at S. the copyhold houses were in mortgage to R. W. for 40*l.* *Rex v. Dunchurch* (*post*) was cited to show that where the property was leased to another, a residence upon it will not gain a settlement. (But *per Lord Kenyon*. C. J. That was the case of a purchase, and a distinction has always been taken between cases where the party came to his property by his own act, or by operation of law.) It was also said that the general expression which runs through all this class of cases, that a party shall not be removed from his own estate, seemed to imply that he must be in possession of it though he need not actually reside in it. On the other side it was argued, that in *Rex v. Catherington* (*post*, 712) the mortgagee was in possession, and there did not appear any surplus on which the interest of the mortgagor could attach; that in *Rex v. St. Michael's, Bath*, (*post*, 711,) the insolvent had conveyed all his interest to trustees, and no probability of a surplus; and the possession of it was afterwards fraudulently obtained by him. Here the pauper had a substantial freehold interest in the parish where he resided, and an undisputed residue in the copyhold premises. In *Rex v. Sowton* he resided not on his estate, but at an ale-house; yet he gained a settlement. Further, 1st, A man cannot be removed from his estate devolved on him by operation of law, whatsoever the value may be. 2d, A residence for forty days irremovable will gain a settlement, except in case of a purchase under 30*l.* 3d, It is enough to reside in the same parish. *Ryslip v. Harrow*, *Rex v. Sowton*, *Rex v. St. Nyott's*, *Rex v. Hasfield* (*post*). 4th, The party need not actually occupy his estate. It is sufficient to reside in the parish where he has a freehold. Lord *Kenyon*, C. J., was clear that a settlement was

If the estate be leased, and the owner reside forty days upon it by leave of the lessee, for the purpose of making repairs, he is settled there.

2. *Of Estates acquired otherwise than by Purchase, &c.*

A pauper entitled to a reversion in fee after the death of tenant for life, gains no settlement by residence in the parish.

A remainder man during the life of the tenant for life has not such an estate as to gain a settlement.

gained at Sedgefield, and said "That he was decided by the case of *Hasfield*, where the child, residing with his grandmother, could not be taken to have been in actual occupation of the property; nor did the judgment of the court proceed upon any such ground." (a) *Grose, J.*, agreed, "That a mere residence in the parish where the estate was, was sufficient." *Lawrence and Le Blanc, Js.*, doubted; but afterwards the court were all agreed that here was a settlement gained in Sedgefield.

Rex v. Ringstead, 9 B. & C. 218; 4 M. & R. 67. The question in this case was, whether the pauper took an immediate estate in land devised by his grandfather; the devise was "to his daughter, widow of T. M., all that messuage, &c., for her life, if so long she continued a widow, and from and after her decease or day of marriage, he devised the messuage and all other real property unto the four children of T. M. and their heirs for ever, as tenant in common." The pauper was one of those children. Between 1817 and 1819, when the property was sold, he resided in Ringstead forty days; his mother being then a widow. Neither of the children was heir at law to the testator, and there was a devise of other property to him. It was urged that the pauper took an estate in fee expectant on the death or marriage of his mother, and had as much right to reside in the parish as if he had a reversion for a term of years. *Contrà*. It is a clear principle of settlement law that a party cannot gain a settlement by estate, unless he has a freehold in possession. He must have an estate of which he may be disseised. *Bayley, J.* "Upon that point the court do not feel any doubt. It was then urged that the pauper took an immediate interest in all that was not devised to his mother;" and judgment was given by *Bayley, J.* who said "We are of opinion that the pauper did not take an immediate estate, and that he is entitled to no estate until the tenant for life died."

Rex v. Willoughby-with-Sloothby, 10 B. & C. 62; 5 M. & R. 32. Order of removal of W. Stokes, &c. from Huttoft to Willoughby, confirmed. Case:—*J. Neal*, by lease and release dated 19th and 20th May, 1825, in consideration of 105*l.*, conveyed a parcel of land and two unfurnished dwelling-houses in Huttoft, to the use of Elizabeth Stokes for life or during widowhood, remainder to the pauper in fee. The 105*l.* had been bequeathed by the father of the pauper to him, and the interest of which the pauper had subsequently by deed settled upon his mother for life or her widowhood; the principal after her death to be paid to himself; 50*l.* was expended by the pauper after the conveyance in furnishing the dwelling-houses, which sum his father had bequeathed in trust to pay the interest to the widow for life or widowhood, and the principal afterwards to the pauper. The pauper paid the interest of the 105*l.* to the trustees, who paid it over to the mother. The pauper entered upon one of the houses and part of the land at the time of the conveyance. The mother let the other house and remainder of the land for one year after the execution of the conveyance, at the expiration of which the mother told pauper she would deliver up all the premises to him, and he might do as he liked with them. The pauper then entered into possession of the other house and land, let it, received the rent, and never accounted for it to his mother; and continued to occupy the same house he had previously occupied until both were sold in May, 1828, and conveyed by deed, to which his mother, still a widow, was a party. The pauper received the whole of the purchase-money, and did not account for it to his mother. They both joined in the receipt to the purchaser. *Bayley, J.* "Ever since *Rex v. Elington* (*ante*, 701) it has been an established principle, that a party cannot gain a settlement by residence on an estate in which he has not a freehold vested in possession. Here the pauper had a freehold estate in expectancy only, viz. a remainder, which implies a

(a) It is to be collected from a MS. note of the late Mr. Masterman that the boy in *Rex v. Hasfield* was not living on his estate. It also appears that the settlement of the same pauper came in question again in *Ryslip v. Hendon*, 5 Mod. 416, where *Holt, C. J.*, incident-

ally said, "Let a man be settled where he will, we are all of opinion he may go and live where he has an estate, and therefore that he might have gone to the place where he had a freehold." 1 East, 258.

preceding estate of freehold in some other person. The cases of *Rex v. Houghton-le-Spring* (ante, 701) and *Rex v. Staplegrove* (post, 718), only show that where a present estate of freehold is vested, the premises need not be in the owner's occupation. In the first of these cases the present freehold interest was vested in the pauper. In *Rex v. Staplegrove*, the estate of freehold in possession was in the pauper's wife, a chattel interest only having been granted by her father to the parish officers. In this case the pauper never had any other estate of freehold in the premises than one in remainder. His mother had the estate of freehold in possession." *Littledale, J.* concurred. *Parke, J.* "This question was expressly decided in *Rex v. Eatington* (ante, 701), and considered by the court as settled law in *Rex v. Ringstead* (ante, 702)." *Lord Tenterden, C. J.* "I entirely concur in the judgment given by my learned brothers." Order confirmed.

5. By Widow's Right of Dower.

Rex v. Painswicke, *Burr. S. C.* 783; 2 *Bott*, 627. The widow of a man who died seised of a house and orchard in South Stoke, entered and resided therein for seven years, without any assignment of dower, and then married a second husband, who resided in this house with her about two years, and then died. By *Lord Mansfield, C. J.* and the court: "The mere right of dower gained a settlement to herself, she having by Magna Charta a right to remain forty days in the house; and being irremovable for forty days, she thereby gained a settlement. But she could not communicate it to her second husband, as a tenant in dower has no right to enter till dower is assigned. (*S. P.* *Rex v. Long Wippingham*, 4 *Doug.* 195.)

Rex v. Northweald Bassett, 2 *B. & C.* 724; 4 *D. & R.* 276; 2 *D. & R. Mag. Ca.* 221. Millicent Reynolds, widow and children, were removed from Northweald Bassett to Magdalen Laver. Order quashed. Case:—*R. Reynolds*, the pauper's husband, died in May, 1822, seised of a freehold estate liable to dower in Northweald Bassett. Dower was not barred, but it had not been assigned, nor had any steps been taken for that purpose. The heir at law has been from the time of his birth an idiot, and at Richard's death was twenty-one years of age. In 1820, long after the marriage of Richard and Millicent, the estate was mortgaged for a term of 1000 years by Richard, to secure the payment of 100*l.* The mortgagee received from the tenant the full half year's rent which accrued after the death of Richard at Michaelmas last, out of which he paid the sum of 3*l.* to the pauper, and took from her the following receipt: "The 7th December, 1822, received of the heir at law of my late husband *R. Reynolds*, deceased, the sum of 3*l.*, by the payment of Richard Hauchin (the tenant), being my third share, as his widow, of the half year's rent of the freehold part of his estate at Thornwood Common, in Northweald Bassett, due Michaelmas last." *R. R.* lived in Magdalen Laver, and after his death the pauper, his widow, resided in that parish for some months, and then hired and lived in a cottage in Northweald Bassett, which was not on the husband's estate. Before her residence of forty days had been completed in that parish, she became chargeable, and was removed. It was urged that the payment of rent was equivalent to assignment. But *Abbott, C. J.* said "The payment was made by the mortgagee, who had no power to bind the heir;" and he added "As it is agreed on both sides that there was in fact no assignment of dower, I am clearly of opinion that the pauper in this case had not any such interest as would entitle her to the possession of any part of the estate as her own, so as to render her irremovable. *Rex v. Painswick* (supra) seems to be a decisive authority; and as that case has never been impeached by any subsequent decision, I think we are bound by it, and consequently the order of sessions must be quashed." *Bayley, J.* "There being an express decision on the point, unless we could see that that decision was wrong, we ought to abide by it. *Rex v. Painswick* is I think a decisive authority upon this question. Here the pauper would never have a right of occupation; for so long as the thousand years term continued, the right of occupation would be in the termor, and whatever right she might have could only be by assignment, which in fact has never taken place." The learned judge, after referring to the decision in *Rex v. Painswick*, added "Now if the

2. Of Estates acquired otherwise than by Purchase, &c.

5. By Widow's Right of Dower.

A widow having right of dower, although not set out, gains a settlement by residing upon the estate; but the second husband gains none, though he resides with her.

A widow, before assignment of dower, has not such an interest in the land of which she is dowerable, as to be irremovable from the parish in which the land lies.

2. *Of Estates acquired otherwise than by Purchase, &c.*

right of dower unassigned would confer a settlement on the party who was residing upon the estate out of which the dower was to issue, the husband would have been irremovable during the whole of that time. The question in that case was, whether the children of the second marriage were settled in the parish in which the mother and father had so resided; and the court held that they were not. Why? Because the right to have the dower assigned, and residing upon the estate on which the mother was entitled to have dower assigned, was not sufficient to communicate a settlement to the husband and the children, the dower not having been in point of fact actually assigned. That case is precisely like this in principle, and we ought to be bound by it." *Holroyd, J.* "I think the decision in *Rex v. Painswick* is decisive of the present case, unless we could see that it was determined upon a wrong principle. We should not be authorized in disturbing it, unless there was reason to doubt the propriety of it. I see no reason for saying that it is wrongly decided, and therefore on the authority of that case I am of opinion that we ought to quash the order." *Abbott, C. J.* "*Rex v. Painswick* is stronger in favour of the settlement claimed than the present case, for there the pauper had actually resided upon the property out of which the claim to a settlement arose. I think it is our safest course to abide by that decision. If we consider the nature of the widow's right to dower before assignment, it will be seen that she had not any right, either legal or equitable, to the land. Her legal right was to have dower assigned; her equitable right to have an account of the rents and profits. But in *Rex v. Berkswell* (*ante*, 692) a right of that nature was held insufficient to confer a settlement. Upon the authority of those two cases, but particularly the former, that being a case of dower, I am of opinion that the widow of Richard Reynolds had not any right to reside in the parish of Northweald Bassett, and that the order of sessions must be quashed."

6. *By Wife's Estate in Trust(a)*

Where an estate is vested in trustees for the separate use of the wife, the husband may gain a settlement by residence upon it.

6. *By Wife's Estate in Trust.*

Rex v. Offchurch, 3 T. R. 114. Henry West and his wife were removed from Thurlaston to Offchurch. Order affirmed. Case:—J. West was the father of the pauper. In January, 1767, his wife, who was mother of the pauper, died, and in June, 1767, J. West married Jane Lockley, with whom he lived in Offchurch until 1770, when they went to Southam. In 1773 they removed to Ladbroke, to a house there held under the following title [the case then stated that his house was vested by a settlement in trustees, to the separate use of the wife, with the usual clause that her receipt should be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, &c.] West and his wife lived in the house ever since 1773. Lord *Kenyon, C. J.* said "The question had some novelty in it; where a person resides on his own property, he gains a settlement by it, it having been considered as an excepted case out of the acts of parliament. Lord *Macclesfield* first held, that as a man cannot be disseised of his freehold he is irremovable from it, and residing forty days on an estate of his own irremovable, and gaining a settlement, are synonymous terms. That indeed does not hold in all cases now; for by 9 Geo. I. c. 7, a purchaser of an estate for less than 30*l.* shall not acquire a settlement for any longer time than he resides upon it. Then here, if this had been the father's own estate, the settlement would clearly have devolved on the son. But it is said that this is only the equitable estate of the wife. Now supposing it had been the wife's legal estate, the husband would have been seised *jure uxoris*, and by residing upon it would have gained a settlement. Then must it be a legal estate in order to confer a settlement? Certainly not. This was not doubted in *South Sydenham v. Lamerton*, (*ante*, 669), or in any of the other cases. The question in that case was, whether the next of kin, without administration, had any estate whatever? and it was held that he had not. In *Rex v. Cold Ashton*, a doubt was made whether a next of kin having the sole right of administration could not gain a settlement without taking out letters of administration. That shows an equitable estate is sufficient to give a settlement; and indeed this position is confirmed by many other cases, and there are none in oppo-

General rule.

(a) See *Rex v. North Cerney*, 3 Bar. & Adol. 463, *post*, 706.

sition to it. (a) Then it is said that this is going still further, because this is only the equitable estate of the wife, and that even the wife herself had no right to reside upon it without the consent of the trustees. But she might, beyond all doubt, if she had chosen, have elected to take the *esplees* with her own hands, and that the trustees could not have prevented. The objection then against the husband's gaining a settlement here is too refined; for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this." The other judges assented, and both orders were quashed.

Mursley v. Grandborough, 1 *Stra.* 97; 1 *Sess. Ca.* 122; 2 *Bott*, 609. Sir John Fortescue demised a cottage of 20s. a year to Eden for ninety-nine years, reserving 12d. rent: Eden assigns the term to Gadden in trust for his wife for life, and then in trust for his son, during the remainder of the term. The wife dies. Afterwards the son dies, leaving a wife, who, as administratrix to her husband, becomes entitled to this term; and she grants this cottage for twenty-four years, excepting two rooms, (in which two rooms she lives,) and marries John Chappel. The question was, whether Chappel, as husband of an administratrix, who was entitled to the trust of a term only, and as being entitled to a chattel in another's right only, was removable by 13 & 14 *Car. II.*? And by the court: "He is not: this is not a taking of a tenement under 10*l.*, for the 12d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own is the way to make him chargeable, for he may not be able to let it." Therefore the orders which adjudged this to be no settlement were quashed.

Rex v. Ilmington, Burr. S. C. 566; 1 *Bla. Rep.* 598. Elizabeth Stanley purchased a leasehold tenement in M. for 6*l.* for the remainder of a term of 1000 years. She resided upon it about nine years, and then married T. E., who resided with her upon the same tenement about sixteen years; then he died, and after his decease she continued upon the premises for several years, and at last sold the same for 6*l.*; and after such sale was removed to Ilmington, the place of her husband's settlement before their marriage. Order confirmed. It was urged, that this woman had an estate vested in her when Evans married her, which upon the marriage vested in him. The husband gained a settlement in Mickleton by forty days' residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the court. Orders quashed.

Rex v. Ynyscynhaiarn, 7 *B. & C.* 233; 1 *M. & R. Mag. Ca.* 77. Order of removal of Hugh Hughes, his wife and children, from Aberdaron to Ynyscynhaiarn confirmed. Case:—H. Williams, the father of Elizabeth Hughes, resided as tenant of a small farm, called Peny Cwin, in Aberdaron, and which he held at the rent of 3*l.* 5*s.* per annum, and died thereon the 9th of June, 1782. Williams made a will the 23d of May, 1782, bequeathing all his personal estate and effects, subject to the payment of legacies, to his daughter Elizabeth, and appointed her sole executrix. Elizabeth continued to reside at Peny Cwin from the time of her father's death until the time of her marriage. On the 27th of July, 1782, Hugh married Elizabeth, and went to reside at Peny Cwin, where they continued many years. Elizabeth proved her father's will on the 23d of May, 1783. Williams never paid any taxes in Aberdaron, nor did Elizabeth while sole, nor Hugh after his marriage, (except county bridge rate,) until 1795. *Bayley, J.* "The wife in this case was executrix of a tenant from year to year, and by forty days' residence as such would gain a settlement. If, therefore, the wife took the interest as executrix, and in that character became tenant from year to year, and married, a settlement would be gained by her husband. If she took the land as tenant for a year, she became tenant from year to year, and the term

2. *Of Estates acquired otherwise than by Purchase, &c.*

The husband of an administratrix entitled to the trust of a term only gains a settlement by residence there for forty days.

A woman, before marriage, purchases a tenement under thirty pounds, her husband, after marriage, resides on the premises, he thereby gains a settlement, and the settlement so gained will be communicated to her.

The pauper married the executrix of a tenant from year to year of an estate under ten pounds a year, and he acquired a settlement by forty days' residence upon the estate.

(a) *Rex v. Geddington* (post, 732) must exist. It must be an equitable estate and not an equitable right. and *Rex v. Llantilio* (post, 735.) The relation of trustee and *cestui que trust*

2. *Of Estates acquired otherwise than by Purchase, &c.*

A man marrying a woman who after the passing of 59 Geo. 3, c. 50, has become a yearly tenant of premises at a rent of less than ten pounds per annum, gains a settlement by forty days residence thereon.

Tenant from year to year at the rent of fifty shillings, died in 1826, and his widow continued to reside on the premises, and paid rent for two half years, without taking out administration, she then married again, and with her husband continued to pay the rent for several years. The question being whether the second husband became entitled to such a legal interest in the right of his wife as gained him a settlement, the court were equally divided.

would vest by marriage in the husband. *Rex v. Ilmington* (*ante*, 705,) shows that a man will acquire by marriage the same right to a settlement which an executor does by the death of the person whom he represents. The executor of a tenant from year to year of an estate under the value of 10*l.* may gain a settlement by residing on it forty days, because the interest vests in him by operation of law. And upon the same principle a husband may gain a settlement by residing forty days upon an estate vesting in him by marriage, although it be of less annual value than 10*l.* A settlement, therefore, was gained in *Aberdaron*." Orders quashed.

Rex v. North Cerney, 3 *Bar. & Ad.* 463. Appeal against an order of removal of John Lovesey and Elizabeth his wife from Winchcomb to North Cerney. Order confirmed. Case:—About five years ago (and after the expiration of the indentures under which the pauper had served in North Cerney,) the pauper's wife Elizabeth, being at that time a widow, took a house and garden, situate in the parish of Winchcomb, of one Greening, from Michaelmas to Michaelmas, at the rent of 3*l.* per annum. She went into the house immediately after taking it, and continued to reside therein until the 23d of July, 1828, on which day she married the pauper, John Lovesey, who immediately went to reside in the said house with his wife, and continued to live there from that time till the order of removal was made. Before the marriage the rent was paid by the said Elizabeth, and after that time by the pauper. The question for the opinion of the court was, whether the pauper gained a settlement in the parish of Winchcomb by his residence on the tenement which had been so taken by his wife before her marriage. Lord *Tenterden*, C. J. "I am not able to distinguish this case in principle from *Rex v. Ilmington* (*Burr. S. C.* 566, *ante*, 705,) and *Rex v. Ynyscynhaiarn* (7 *B. & C.* 233, *ante*, 705). In the last mentioned case it was expressly decided that a man by marrying a woman who was a yearly tenant of premises of less than the annual value of 10*l.* gained a settlement. So here upon the same principle the pauper gained a settlement in the parish of Winchcomb, his wife having before her marriage become the yearly tenant of a house and garden at the rent of 3*l.*, and that interest having on the marriage vested in him by operation of law." *Littledale*, *Parke*, and *Patteson*, Js. concurred. Order of sessions quashed.

Rex v. Barnard Castle, 4 *Nev. & M.* 128; 2 *Ad. & E.* 108. Removal of H. Siddle and family from Barnard Castle to New Forest. Order quashed. Case:—The pauper's settlement by parentage was in New Forest, but the appellants contended that he had subsequently become settled in the township of Marrick, in the North Riding of Yorkshire, by residence on the property of his wife. The pauper in 1827 married his present wife, then a widow. Her former husband rented a cottage in Marrick at 50*s.* a year, payable on the 21st of June and the 21st of December in every year; and was residing in it at the time of his death, in September, 1826. The widow did not take out administration, but continued to live in the house with her five children from the period of her husband's death till her marriage with the pauper, and paid the rent due in December, 1826, and June, 1827. The pauper, on his marriage with the widow in September, 1827, went to reside with her on the premises, and paid the half year's rent due on the 21st of December, 1827. He continued to occupy and pay rent for the tenement for several years: first, the old rent of 50*s.*, and afterwards 4*l.* If this court should be of opinion that, under the above circumstances, the pauper was settled in Marrick, the order of sessions was to be confirmed, otherwise to be quashed. Lord *Denman*, C. J. "I think the proof in this case was sufficient to establish the pauper's settlement in Marrick by residence on his wife's estate. It is stated that the widow on her first husband's death did not take out administration, but continued to live in the house with her children from her husband's death till her second marriage, and paid the rent due in December, 1826, and June, 1827. The question is, whether that statement raises such a presumption of her having assumed a representative character as makes her holding necessarily a holding by wrong. It seems to me that it ought to be shown by the case, and not assumed, that she was acting in a right which

she did not possess; and the statement before us as to her holding, and the subsequent payment of rent, makes out, to my mind, that she was upon the premises as tenant in her own right, and not as a person entitled, but omitting to take out administration. Certainly there is some doubt upon the subject, and it would have been more satisfactory if the sessions had stated the case more particularly; probably, however, they have found all the facts that came before them, and I think those facts present to us matter from which we ought to infer that the holding by the widow was by such a title as she might lawfully claim, and not otherwise. With deference, therefore, to my brothers who are of a different opinion, I think the sessions have decided rightly." *Taunton, J.* "I am sorry that on so insignificant a subject there should be any serious difference of opinion on the bench; and I do not give my judgment without distrust on that account; but still the case is one upon which I cannot entertain what appears to me a reasonable doubt. We must proceed upon the facts as stated, and not upon any ingenious supposition of other circumstances. The first husband died in September, 1826; the widow continued in the occupation of the premises, and paid the rent up to December, 1826, and for the following half year. The question is, whether it is necessary to infer that those sums were not paid on her own account, so as to make her the tenant, but are referable to a prolongation of her late husband's interest, and consequently not made in her own right. The sessions, having found in favour of the settlement in Marrick, must be taken to have expressed their opinion that the payments were made on her own account. And with all respect to my brothers who are of a different opinion, I think it is putting a forced construction on the facts to suppose that she should have paid the rent as representative of her husband (being under no obligation to do so), and not on her own behalf. It is true that the landlord never having given any notice to quit, might, if he thought proper, have considered the tenancy of the husband as still subsisting; it does not, however, appear that he did so, but rather that she paid the rent, and he accepted it, as due from her. No dissent appears on his part to its being so paid; nor is there any thing to show, on behalf of the respondents, that it was received (as they must contend) in contemplation of a prolonged interest in the widow as representative of the deceased. If then the landlord received the rent from her personally, in her own right, there is an end of the question; she became tenant from year to year, and on her marriage with the pauper, the estate vesting in him by operation of law, conferred a settlement on him, though the rent was below 10*l.* a year. Under all the circumstances, I think there is enough to satisfy us that she became tenant in her own right; the sessions might, indeed, have stated the case more distinctly, and it would have been desirable to send it back in order that they might say in what light they considered this point; but it would be attended with expense, and I do not think the doubt sufficient to warrant it." *Patteson, J.* "There is no doubt or difference of opinion as to the law of this case. It is clear, that if the widow became tenant in her own right, though she was not thereby settled in Marrick, the husband she married was; and there is no doubt, that if she continued on the premises only as a person having a right to take out administration, she could not acquire a settlement in her own right, nor the second husband through her, she not being the representative of the deceased. The only difference of opinion is on the facts of the case; and I think it would have been more satisfactory to send it back. The sessions are supposed to have inferred that the widow became tenant in her own right, because their order is in favour of the settlement in Marrick. But they ought to have drawn that inference expressly, and the danger of leaving it to the court is shown by what has taken place: one part of the court drawing one inference, and another the contrary. The question, however, is not of sufficient importance to warrant sending the case back. It appears to me that some evidence ought to have been given of an actual change of the tenancy, and of some new contract entered into between the widow and the landlord. Where the original tenant had his family living with him in the house during his life, and upon his death his widow, who is entitled to take out administra-

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tion, remains with the children in the house, I think it is too much to say that a mere payment of rent by her is the commencement of a new tenancy, especially when a part of the rent she pays is rent which accrued during the tenancy of the husband. It appears to me, that she only continued on the premises in the situation of a next of kin, neglecting to take out administration. Suppose she had ultimately taken it out, could it have been said that she was in, not as personal representative, but as tenant, because she had previously paid rent? The want of any interposition by the landlord is relied upon as showing that her continued holding was in her own right; but I think that this fact tells the other way, and that an interposition of the landlord was requisite to make it appear that she became tenant." *Williams, J.* "I am sorry there should be a difference of opinion in this case; but the sole question is, upon the facts found, whether or not the widow became occupier of the premises in her own right. As to that I only say, it does not satisfactorily appear to me that the sessions meant to find a payment of rent by her, and acceptance of it by the landlord, on her own account, so as to make her his tenant. The fact is a simple one, and might have been expressly stated. As it is, I am not satisfied that the widow became tenant in her own right; if she did, it would have been better found by the sessions than left to be inferred by us." The court being equally divided in opinion, no judgment was given.

A. granted by lease a cottage to the eldest son of his only daughter, and died. The daughter married and died, but never had reduced the estate into possession: Held, forty days' residence by the son after the death of his mother gives him a settlement.

Rex v. Great Farringdon, 6 T. R. 679. Order of removal of William Herbert from Stanford to Great Farringdon confirmed. Case:—The pauper on his marriage in 1782 went to reside in a cottage belonging to his grandfather, who had agreed to give it to him. The agreement was in writing, but not stamped. The pauper fitted up the cottage, and resided upon it as his own till 1795; no rent was ever paid, or claimed. The grandfather died in 1783. The pauper's mother was his only child, married to Herbert, the pauper's father. The pauper's mother died in 1786, leaving her husband and the pauper, her eldest son. The husband is now living. *Lord Kenyon, C. J.* "No interest passed by the agreement. Then, on the death of the grandfather, the estate descended to his daughter, who might have reduced it into possession, but did not; and in order to make the husband tenant by courtesy, there must be a seisin in fact in the wife. Then, as she did not reduce it into possession, it descended to the pauper, who is seised in fee." Orders quashed.

7. *Guardian by Ward's Estate.*

A feme covert as guardian in socage, residing on the ward's estate for forty days, cannot be removed from it.

7. *Guardian by Ward's Estate.*

Rex v. Oakley, 10 East, 491. Removal of John King and Mary his wife from Brill to Oakley confirmed. Case:—Thomas Hawes, about thirty-eight years ago, inclosed a piece of waste land in Brill, and built a cottage thereon, which he occupied till his death. By indenture, dated the 3d November, 1795, he and his son Thomas demised the cottage to James Hawes for five hundred years, by way of mortgage, for securing 20*l.* and interest, which yet remains unsatisfied. (a) Thomas, the son, afterwards married the pauper, Mary, and resided in the cottage with his father until June, 1801, when Thomas, the father, died intestate, leaving his son his heir at law, who continued to reside on the estate till November in the same year, when he died intestate, leaving the pauper, Mary, his widow, and four infant daughters, three of whom at the time of the removal were under fourteen years of age. The widow continued with her daughters to reside on the said estate for more than forty days after the death of her husband, before her eldest daughter attained the age of fourteen, and in October, 1806, the widow intermarried with the pauper, John King, whose legal settlement was in Oakley, and who, with his wife and her children, resided on the estate from the time of the marriage to the time of the removal. The estate at the time of the removal was of a less annual value than 10*l.* It was admitted that Mary

(a) This case was decided on the assumption that the parties had a legal estate (see *Rex v. Toddington*, post, 710); but in truth they had only the equity of redemption.

gained no settlement by any right of dower. The only question argued was, whether either John or Mary King gained a settlement by their respective residence on the estate? Lord *Ellenborough*, C. J. "There is no doubt in this case but that the mother, who was guardian in socage to her daughters, had a right to elect whether she would let the estate or occupy it for their benefit, and unless she let it, the law which imposes the duty of a guardian upon her, would necessarily protect her in the personal occupation and superintendence of it. The only difference which can be pointed out between the cases of an executor or administrator and of a guardian in socage, in this respect, is that the one is accountable for the profits by statute, and the other at common law. The law considers a guardian in socage as entitled to the possession of a ward's property, and incapable of being removed from it by any person; such a guardian has not the mere office or authority, but an interest in the ward's estate. It is laid down in *Wade v. Baker* (1 *Lord Raym.* 131), that he may maintain trespass and ejectment, avow for damage feasant, make admittance to copyhold, and lease in his own name. He cannot, indeed, convey the property absolutely as an executor or administrator, because the nature of the trust does not require it in the one case as it does in the other; but he may dispose of it during his guardianship, though accountable afterwards to the heir. The widow, therefore, had such an interest in the estate as rendered her irremovable from it." *Grose*, J. "The question is, whether the widow was irremovable from this property for forty days? She had a right during her guardianship either to lease or occupy the estate, and if she chose to occupy it, she was irremovable from it as from her own, though liable to answer afterwards to the ward for the profits." *Le Blanc*, J. "The case, though new in circumstance, is not new in principle. It is governed by the decisions which have taken place, that in order to make persons irremovable on account of having property in the parish, it is not necessary to have a beneficial interest in it for themselves, but it is sufficient that they reside there for some beneficial purpose to another. Now a guardian in socage has a right to the possession, and until she leases it, it is for the interest of the wards that she should occupy the estate, and there can be no right to remove her from it to their prejudice, as in the case of an administrator, or of a sole next of kin, even before administration granted, who has a right to reside on the leasehold property, and such residence for forty days will give him a settlement in the parish." *Bayley*, J. "If a guardian in socage can maintain trespass and ejectment in his own name, and avow for damage feasant on the land, this shows that he has a right to occupy it. And this is confirmed by the old method of pleading by guardian in socage, which was, that he entered as guardian into the tenement in question, and was possessed. In like manner an administrator has a right to the possession of leasehold property, and is only accountable for the profits." Order of sessions quashed.

Rex v. Sherrington, 3 *Bar. & Ad.* 714. Appeal against an order for the removal of Mary Bailey from Olney to Sherrington. Order confirmed. Case:—Sarah Whiting by her will, duly executed and attested, dated the 9th of October, 1821, devised her real estate unto and to the use of her niece Catherine Bailey, the pauper's sister, her heirs and assigns, and appointed John Bailey, the father of Catherine and of the pauper, executor. The testatrix at the time of the execution of her will, and thenceforward till her death, was seised in fee simple of a real estate in the respondent parish, consisting of two cottages or tenements. On the testatrix's death Catherine was in the sixteenth year of her age, and her father immediately took possession of the two tenements, considering himself her guardian, and resided in one of them for five or six years, both his daughters living with him and forming part of his family during the whole of that time. He let the other cottage to a tenant and applied the rent to his own use, considering it a compensation for the expense of bringing up his daughter Catherine. The pauper had gained no settlement in her own right. The question for the opinion of this court was, whether John Bailey gained a settlement in the respondent parish by residing under such circumstances on the tenement

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A real estate was devised to C. B., who on the death of the testator was sixteen years old. Her father considering himself her guardian resided with her on the estate: Held, that as the estate came to the daughter by the devise, and not by descent, and she was above fourteen years of age, the father was not a guardian in socage, but natural guardian only, and that having as such no interest in the land, he gained no settlement by residing on it.

2. *Of Estates acquired otherwise than by Purchase, &c.*

The mother of an infant copyholder was holden to be legal guardian of the copyhold (there being no custom of the manor for appointing one), and therefore entitled to reside irremovably on the estate.

No guardian in socage of an equitable estate.

devised by Sarah Whiting's will. Lord Tenterden, C. J. "The father of the pauper was not guardian in socage, because the land did not come to his daughter by descent, nor was she under fourteen years of age. Neither was he a guardian appointed by the parent of a child under the age of twenty-one years, pursuant to the statute 12 Car. II. c. 24, s. 8, who as such would be entitled to take the profits of the land. Then he was only the natural guardian, and had not in that capacity any title to a control over the land belonging to his child. To give a settlement there must be an interest in the land." *Littledale, J.* "In *Quadring v. Downs* (2 Mod. 176,) it was held, that there can be no wardship without a descent. The land, therefore, having come to the daughter by devise, and not by descent, the father was not guardian in socage. Nor was he a guardian appointed pursuant to the statute. He had, therefore, no legal or beneficial interest in the land, and consequently gained no settlement by residing on it." *Parke, J.* "The father here was only the *natural* guardian, and it is clear that as such he had no interest in the land, for that guardianship extends no further than the custody of the infant's person." (*Hargrave's note to Co. Litt. 88 b, note 66.*) *Taunton, J.* concurred. Order of sessions confirmed.

Rex v. Wilby, 2 M. & Sel. 504. Removal from Debenham to Wilby confirmed. Case:—In 1794 John Bedwell went with a certificate to reside in Debenham. In 1807 he purchased of Smith a copyhold estate, holden of the manor of Bloodhall, in Debenham. After his decease, his widow and family continued to reside on the premises for 143 days, and until their removal by this order. No instance appeared on the rolls of any actual assignment by dower; but it was usual for *femes covertes* to join with their husbands in securities (surrenders by way of securities) of estates possessed by such husbands in their own right within the manor, though never expressly stated in bar of dower; and the pauper had actually joined with her husband in the before-mentioned conditional surrender of these premises. The copyhold descended to the youngest son. *C. a. v.* Lord Ellenborough, C. J. "The court had looked into the cases, particularly *Egleton's case*, and that it seemed to them that the mother was the guardian of the infant's copyhold, and as such was entitled to occupy the same irremovably." Orders quashed.

Rex v. Toddington, 1 B. & Ald. 560. Removal of D. Evans, Susannah his wife, and children from Flitwick to Toddington confirmed. Case:—In 1801, S. Elmer, the then husband of the pauper Susannah, agreed to purchase a cottage at Flitwick of James Evans. There was no conveyance or written contract, but S. E. entered and continued in possession till November, 1802, when he died intestate, leaving Susannah and one child three years old. The widow and child resided in the cottage till July, 1804, when she married the pauper D. Evans, who, with his wife, resided in the cottage more than forty days. On the 12th September, 1808, J. Evans duly conveyed his cottage to the pauper, and the consideration was stated to be 16*l.* paid at the making of the deed by the pauper to J. Evans; but no sum was paid; the only consideration was the money paid by S. Elmer. On the 4th October, 1808, the pauper duly conveyed the premises to W. F. for 25*l.* Lord Ellenborough, C. J. said, "This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with a legal right to it. *Rex v. Oakley* (*ante*, 708,) is clearly distinguishable from this; that was decided on the assumed ground of a legal estate. But this is at most a question of an equitable estate only, and we are to consider, not only whether a court of equity would order a legal estate to be conveyed, but whether in that case the conveyance would operate *ab antecedenti*, so as to constitute a legal estate in the father which would descend to the heir; for unless that be so, the guardianship in socage, which is one of the incidents of the legal estate descending with it, will not go to the widow. I think, therefore, that the widow in this case was not nor ever has been guardian in socage. If so, her husband could not by residence in the parish gain a settlement." *Bayley, J.* "A court of law generally looks at legal rights only, and not at doubtful equitable estates. There are, indeed, equitable rights recognised by statutes, of which perhaps courts of law are bound to take notice; but how

can we see that the party in this case is entitled to an equitable estate? We do not know what was the original bargain between Elmer and Evans, and the case states a subsequent conveyance to a stranger, and not to the heir-at-law, from whence a totally different conclusion from that contended for (of procuring a conveyance to the child) would seem to arise." *Holroyd, J.* "Where there is a conveyance to uses not executed, or on trusts stated on the face of the deed, the one party has the equitable the other the legal estate. In these cases, for collateral purposes, a court of law will take notice of such equitable estates. An equitable estate, however, is very different from an equitable right to have a conveyance of the legal estate. Here the party had only the latter; and if there be any doubt as to what a court of equity would do, this court will not take cognizance of the estate. But supposing there is a sufficient equitable estate here, there must be also a guardian in socage. It is to be observed, that the law only took notice of the tenant of the legal estate. It was his duty to do all the services if he was of age; and if an infant or lunatic, the burden and right were cast on the guardian in socage. The guardian in socage, therefore, was only appointed in the case of a legal estate; for otherwise there would have been this incongruity; two persons would be bound to perform the services, viz. the trustee having the legal estate and the guardian in socage for the *cestui que* trust. It is said that the widow might be by a court of equity clothed with the estate; but the utmost that that court could do, would be to decree a conveyance of the legal estate to the infant, who would then take by purchase and not by descent; and there can be no guardian in socage, except where the heir takes by descent." Order confirmed.

2. Of Estates acquired otherwise than by Purchase, &c.

8. Estate in Mortgage.

8. Estate in Mortgage.

Rex v. St. Michael's, Bath, Doug. 630. The pauper conveyed two houses, whereof he was seised in fee, at Walcott, to trustees, in trust to sell and pay mortgages and other debts, and to pay the surplus money, if any, to the pauper. Some short time after, one of these houses becoming void, the trustees having possession thereof, employed a woman to clean and air the house, and delivered to her the key for that purpose; which having done, she placed the key among some things of her own, intending afterwards to re-deliver it to the trustees: but the pauper's wife took it from thence, and took possession of the vacant house, and she and her husband went and lived there till the removal, being about a year and three quarters. The deed did not provide for the annual rents to be sold. One of the trustees seeing her conveying her goods thither gave her notice that she was doing wrong, not having the consent of either the trustees or creditors. But the house still remained unsold, and it was stated that the value of the premises was 650*l.* and the debts 880*l.* It was argued, that the beneficial interest in the estate remained in the pauper till sold; and for this was cited *Rex v. Natland (ante, 696)*; and that residing upon it as his own he was not removable from it, and consequently gained a settlement. And it was likened to the case of a mortgage. By Lord Mansfield, C. J. (unto which the rest of the court assented): "If the estate on which a pauper resides is substantially his property, that is sufficient, whatever form of conveyance there may be; and therefore the *mortgagor in possession gains a settlement*, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, what interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says, he shall have the surplus, *if any*. He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession, till the mortgagee brings an ejectment. After the mortgagee has got into possession, he (the mortgagee) might gain a settlement. There is still another and a stronger ground in this case; for the possession was gained by fraud."

An estate conveyed to trustees to be sold to pay mortgages and other debts, will not give to the person conveying it a settlement by a subsequent residence till actually sold.

A mortgagor in possession may gain a settlement.

So also a mortgagee in possession.

Note. In *Rex v. Edington (post, 712)*, the court said, "that the main point

2. *Of Estates acquired otherwise than by Purchase, &c.*

A mortgagor living on the premises mortgaged, but not in possession as owner, gains no settlement.

If a cottage be leased for years determinable on lives, and be conveyed by a woman and her husband in trust to raise money by sale or mortgage, with a clause for re-assignment, and the parties continue in possession and the husband die, and the wife marry a second time, she retaining possession, the second husband gains a settlement by forty days' residence, though the money do not appear to have been paid.

upon which the decision in this case was made, was the fact of fraudulent possession."

Rex v. Catherington, 3 T. R. 771. William Booker was removed from Compton to Catherington. Order confirmed. Case:—The pauper, prior to Michaelmas, 1789, was entitled to the equity of redemption of a freehold estate in Compton, consisting of several dwelling-houses of the annual value of 13*l.* 5*s.* which had been mortgaged by his father to Elizabeth Morey, which mortgage was afterwards assigned to one Ayles. In Michaelmas term, 1788, Ayles delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in Compton, and thereupon the tenants attorned to Ayles. About Michaelmas, 1789, the pauper asked permission of Mr. Newland, the agent for Ayles, to inhabit one of the houses, part of the mortgaged estate, and which was then untenanted, for the purpose of overlooking some repairs, which he proposed to do upon the estate with an intent to sell the same and pay the mortgage money; in consequence of which he inhabited one of the houses upwards of three months, when he was removed by the present order. He did nothing towards the repair of the houses or sale of the estate. No agreement was made between him and Mr. Newland with respect to any rent to be paid for such house. Lord Kenyon, C. J. "It has been long established that an equitable title is sufficient to give a settlement; but, in the case alluded to, the mortgagor was in possession. So, by the act for regulating votes at county elections, either the mortgagor or mortgagee in possession may vote. But in this case the party had neither *jus in re* nor *ad rem*." Buller, J. "In *St. Michael's, Bath* (*ante*, 711), it was said, that either a mortgagor or mortgagee might gain a settlement according to circumstances; one of these circumstances is possession; and upon possession all the questions have turned." Orders confirmed.

Rex v. Edington, 1 East, 288. Removal from Edington to Urchfont, quashed. Case:—M. M., being in possession of a cottage in Edington, granted to one C. W. for ninety-nine years determinable on three lives, purchased a reversionary interest in the same for a further term of ninety-nine years, to commence at the determination of the first term, but determinable with the lives of herself and her brother H. M. Having married one W. D., the premises were assigned by deed, to which she and W. D. were parties on one side, and J. P. of E. on the other, to J. P. as trustee for the parishioners of E. for the payment of 10*l.* and interest, in trust that J. P. should, by sale and mortgage of the premises, and by the receipt of the rent, or by one of those ways, raise the sum, &c., together with costs and charges; and after payment of the 10*l.*, &c., in trust to re-assign. W. D. died, leaving M. D. his widow, who afterwards married the pauper W. B., then settled in U. She and the first husband in his lifetime (and after his death and her second marriage, and also after the death of the surviving life named in the first lease, she with the pauper her second husband, for the space of four years,) occupied to the time of her death, and the pauper continued to pay the lord his quit-rent during his possession, and at different times repaired the premises: but it did not appear whether the lord had any knowledge of the assignment. Lord Kenyon, C. J. "Some points of this case are very clear. Generally speaking, in the case of a purchase, if the value be under 30*l.* no settlement can be gained by virtue of it; that is, where it comes to the party by his own act: but if it come to him by operation of law, the value is not material. That is the case here; for the purchase was made by the wife before the coverture, and it came to the husband upon his marriage by act of law; and he might even during the coverture have sold it without the assent of his wife. But the objection now made is, that this was not such an interest in the husband as was sufficient to enable him to gain a settlement by residence on the property, on account of the antecedent conveyance to Price the trustee. But what was that conveyance? It was for the purpose of securing the re-payment of a sum of money expended by the parish for the use of the man's family. Lord Mansfield, in the case of *St. Michael's, Bath* (*ante*, 711), said, 'it was an affront to common sense to say that a mortgagor has no interest in the mortgaged premises. The law recognises his interest; in

the case of a freehold, he has a right to vote for members of parliament.' Now the conveyance in question is equivalent to a mortgage, and no more. Consider what in strictness is the interest of a mortgagor; after the usual time given for the payment is expired, the estate becomes absolute in the mortgagee at law; but neither the courts of law or equity lose sight of what the parties intended. In mortgage deeds there is sometimes introduced a clause that the mortgagee may repay himself by sale of the mortgaged premises, without the concurrence of the mortgagor: but a court of equity would, I believe, control the exercise of that power. I am sure they would control it in an instance like the present, upon payment of what was due. The trustee, in such a case, would be bound to execute a reconveyance: and here there is an express clause to that purpose. Virtually, therefore, this is no more than a mortgage, and must be governed by the same rules. With respect to the case of *St. Michael's, Bath*, principally relied on, it is very plain that the greatest stress was laid on the circumstances of the pauper's possession having been obtained by fraud. After touching upon the interest which he had in the premises conveyed, Lord Mansfield says at the end of the case, 'there is still another and a stronger ground in this case; for the possession was obtained by fraud.' Now if the other point had been clear, he would not have used such an expression. Here the possession was not fraudulent; and therefore I am of opinion that the second husband, the pauper, gained a settlement by his residence on this estate, which came to him by operation of law on his marriage." *Grose, J.* "I cannot distinguish this from the case of a mortgage. The purpose of the conveyance was to secure the money. The parties interested continued afterwards in possession: the pauper paid the quit-rents and repaired the premises. Now what more could a mortgagor in possession do? In the case of *St. Michael's, Bath*, another reason is given for the judgment than what is now relied on: the possession there was fraudulently obtained by the pauper: it was expressly found to be against the consent of the trustees who had before taken to the possession. Whereas here the pauper always continued in quiet possession of the premises." *Lawrence, J.* "The principal argument against the settlement set up in this case is grounded on a dictum in the case of *St. Michael's, Bath*, in the first part of the opinion delivered by Lord Mansfield: without which there is no pretence for the objection. For it cannot be disputed that a conveyance to a trustee in trust by sale, or mortgage, and receipt of the rents and profits, to raise 10*l.*, is merely a security for that sum: and it is plain that the parties themselves so considered it, by providing for a re-assignment of all or so much as should not be sold, applied, or otherwise disposed of. Now in that case Lord Mansfield begins by saying that which is decisive as applied to this. 'If the estate on which a pauper resides is substantially his property, that is sufficient, whatever forms of conveyance there may be:' and therefore he says that a mortgagor in possession gains a settlement, 'because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security.' If then the object be merely to secure money, whether the conveyance be in the form of a trust like the present, or of a mortgage, it is in substance the same thing." *Le Blanc, J.* "I am of opinion that the pauper gained a settlement by residing on this estate, in which he had an equitable interest; and I consider that the assignment to the trustee was no more than a security for so much money. According to what was said by Lord Mansfield in the case of *St. Michael's, Bath*, the court will not look to the mere form of the conveyance, but will consider what the parties really meant by it. Then, if this were substantially a mortgage, as I think it was, it is clear that the pauper gained a settlement by residing on the premises." Order of sessions affirmed.

Rex v. Cregrina, 4 Nev. & M. 455; 2 Ad. & E. 536; 1 Harr. 53. On appeal against an order of two justices for the removal of Septimus Lloyd from Cregrina to Glascombe. Order quashed. Case:—The pauper acquired a settlement in Glascombe by renting a tenement situate in that parish for several years, up to 1830, at the yearly rent of 24*l.* The pauper's father John Lloyd died in 1822 intestate, possessed of a leasehold tenement situate in Cregrina, which

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Where one of several mortgagees agrees verbally to sell his interest for a sum which is paid him, and afterwards joins in executing a re-

2. *Of Estates acquired otherwise than by Purchase, &c.*

lease and assignment of all his interest in the mortgaged premises: Held, that he gained no settlement by a residence in the parish where they lay, between the time of the agreement and the release.

Estate purchased by the husband for less than thirty pounds, and after marriage assigned as a security for money lent, and after payment, in trust for the sole use of the wife: residence by her husband before payment gives no settlement.

he held for the residue of a term of 999 years at a peppercorn rent. He left a widow and four sons, John, James, Septimus (the pauper), and William. On the 4th of August, 1828, James took out letters of administration to his father's estate. By an indenture of assignment dated the 23rd of August, 1828, between the said James Lloyd, the administrator, John Lloyd, Septimus Lloyd (the pauper), and William Lloyd, and Mrs. Ann Guise, after reciting the lease, the tenement was assigned by James Lloyd the administrator, and confirmed by John, Septimus, and William Lloyd to Mrs. Ann Guise, by way of mortgage for the residue of the term of 999 years, for securing 120*l.* and interest. The four brothers divided the 120*l.* equally between them, executed the deed and signed the receipt, and covenanted for the repayment to Mrs. Guise of the 120*l.* and interest. At the time of this transaction the pauper resided in the parish of Glascombe, upon the tenement before mentioned. About a year afterwards, whilst residing in the tenement in Glascombe, he agreed verbally with his brother William Lloyd to sell to William all his interest in the leasehold tenement, in consideration of his paying the share of the pauper in the 120*l.* and all interest due and to grow due, and also of the sum of 2*l.* which was allowed to the pauper by William. About a year after making this agreement, the pauper removed into a cottage in the parish of Cregrina, and continued there till his removal under this order, but did not interfere with the leasehold tenement. In September, 1832, William Lloyd, on behalf of himself and his brothers James, John, and Septimus, gave Mrs. Guise notice of paying off the principal and interest on her mortgage. By an indenture dated 29th of April, 1833, John Lloyd, James Lloyd (the administrator), and Septimus Lloyd (the pauper), in consideration of 30*l.* expressed to be paid them by William Lloyd, released and assigned to him all their interest in the leasehold tenement. No money passed to the pauper; William Lloyd claiming and retaining his, the pauper's, share, under the bargain made three years before, and having received and retained the intermediate rents belonging to the pauper's fourth share. Lord Denman, C. J. "It appears to me that no interest whatever remained in the pauper after the agreement." *Littledale and Williams, Js.* concurred. Order of sessions quashed.

Rex v. Tarrant Launceston, 3 East, 226. Removal from Tarrant Launceston to Tarrant Rawson quashed. Case:—J. C., the pauper, in June, 1795, made a purchase for less than 30*l.* of a leasehold tenement in T. L. for 99 years, determinable on three lives, in consideration of 10*l.* advanced to him by W. D.; he afterwards sold the estate with the lease to W. D. to hold for the remainder of the term, in trust, to let the premises, receive the rents, and pay himself the 10*l.* with interest; and after such repayment to receive and pay the rents and profits to the wife of the pauper during her life, to her sole use, not subject to the debts of her husband, and her receipt alone to be a discharge of the rent; and after her decease, in case the pauper survived her, in trust to pay the rents to the pauper during his life; there were other trusts after the death of the survivor. After the execution of this deed, W. D. suffered the pauper to continue residing upon the premises, which he did till he became chargeable, when he was removed. It was urged, first, that the pauper took a new estate by act of law, by virtue of which a settlement might be acquired, either as mortgagor in possession, or by virtue of the equitable interest of his wife in it. *Rex v. Edington* (*ante*, 712,) was cited. Secondly, That as the trustee did not reject the pauper, the parish officers could not legally procure his removal from the property, in which he as well as his wife had a reversionary interest. Upon payment of the 10*l.* he was to reside on it immediately in the right of his wife. On the other side it was said that this was no mortgage; here the pauper was not entitled to any thing; he had no intermediate interest left in him. The pauper had assigned the whole term as a security for the 10*l.* and that was never repaid. He was no more than a tenant at sufferance. Neither was he entitled to reside there in right of his wife, supposing the 10*l.* to have been paid off, for the husband is by law bound to provide a suitable residence for his wife, and the house being then to be holden in trust for her separate use, the trustee would have been

guilty of a breach of trust to have given it up to the husband, unless in the character of a tenant paying for it. *Rex v. Edington* was on the footing of a mortgage: for on payment of the money lent the premises were to be re-assigned to the party. The pauper's continuing in possession here was a fraud upon the trust. That there is no instance of a settlement gained by the act of the original purchaser of an estate under 30*l.* value. It must come to the party through whom the settlement is acquired by act of law. If the pauper had an equitable interest it was by his own act, and therefore he could not gain a settlement by it. Lord *Ellenborough*, C. J. "If this had been *res integra*, I should apply to the plain letter of the statute [he read 9 Geo. I. c. 7, s. 5, and said] that is for so long as there is an union of interest and occupation in the thing. We must not however contravene the authorities, but preserve uniformity of decision. This was not a residence of the pauper as mortgagor. He had parted with the absolute interest which he had in the premises. (a) For even when the 10*l.* is paid, (which *non constat* is ever likely to be done) the trustee is to account for the rents and profits to the wife for her separate use during her life; and I think there is much weight in the observation which was made against any claim of the husband to reside upon property so circumstanced in the right of his wife. In the first instance however, and during the time of his residence there, the trustee was entitled to the rents and profits till the 10*l.* advanced by him was paid; it was contingent whether that would ever be done, whether the wife would ever be entitled to the rents and profits; and if she became so, it was also contingent whether the pauper would survive her, so as to have any claim of his own. I should therefore be much inclined to ask with Lord *Mansfield*, in *Rex v. St. Michael's, Bath* (*ante*, 711), 'What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage to pay off debts.' Upon the whole this was such a doubtful contingent interest in the pauper, that without clashing with any of the adjudged cases, I am authorized to say that no settlement was gained by the pauper's residence on this property." The other judges agreed, and the order of sessions was quashed.

Rex v. Dorstone, 1 *East*, 296. Removal of Mansell Powell with his wife from Dorstone to Blakemere quashed. Case:—The pauper went prior to November, 1778, to reside with his wife and family in Blakemere, upon a tenement which he rented there at 1*l.* 15*s.* per annum. On the 14th of the same November, and whilst the pauper resided at Blakemere, T. Matthews died intestate, seised of a freehold house and lands in Blakemere, which descended to the pauper's wife and her two sisters as coparceners, being the grandchildren and co-heirs of T. M. On the 14th December the pauper entered into an agreement to sell his wife's share of the house and lands to John Delahay, husband of one of her sisters. After the agreement was signed, the referees valued the pauper's wife's share of the premises at 28*l.* The deeds not being ready by the 2nd of February, the pauper complained, and Mr. Elliott, agent for Delahay, offered to pay him three months' rent for his wife's share of the premises if required; but the pauper did not require it; the deeds were executed and the money paid the latter end of February or beginning of March, 1779. From the 14th of November, 1778, when the grandfather died, to the execution of the deeds in the latter end of February or March following, the pauper resided in the tenement he rented at Blakemere, but did not occupy any part of the tenement which descended to his wife and her sisters; the house and gardens were in the occupation of Delahay and his wife, and the rest of the land was occupied by Mead, who had been tenant to the grandfather. A distinction was suggested between this case and *Houghton-le-Spring* (*ante*, 701), that here the title accrued on the 14th of November, and within less than forty days, viz. on the 14th of December, the pauper bound himself to convey away the property. The court however said, "That the contract was executory, and the conveyance was not

2. Of Estates acquired otherwise than by Purchase, &c.

Whether a husband can, by residence on an estate vested in trustees to the sole use of his wife acquire any settlement, except as tenant?

A freehold estate situate in the parish where the pauper resided, descended to his wife and her sisters as coparceners; one month after he contracted, to sell his wife's share, but the conveyance was not executed for more than forty days after their title accrued: Held, that by residence in the parish (without occupation) he gained a settlement.

(a) If equity of redemption be parted with even by parol, then subsequent residence gains no settlement. (*Rex v. Cregrina*, 4 *Nev. & M.* 455; 1 *Harr.* 53; 2 *Ad. & E.* 536, *ante*, 713.)

2. *Of Estates acquired otherwise than by Purchase, &c.*

9. *By Estate acquired by possession.*

Living in a cottage which came to the pauper by descent gains a settlement, though the pauper's father built the cottage upon a waste, without the lord's consent: for a justice of peace cannot determine a man's title.

Twenty years' residence in a cottage, built without the consent of the lord of the manor, confers a settlement.

Possession of a cottage for more than twenty years, though not altogether adverse, will gain a settlement.

actually executed till long after the forty days were expired, till when the title remained in the pauper, and consequently he gained a settlement in Blake-mere." Order of sessions quashed.

9. *By Estate acquired by Possession.*

Rex v. Wyley, 2 Sess. Ca. 115; 1 *Stra.* 608; 2 *Bott*, 610. A poor man built a cottage upon the waste of Wyley, belonging to Lord Pembroke, without his license, who never disturbed him; he lived in this cottage for thirty years, and by his will left three guineas in the hands of his executors to purchase this cottage. Upon his death, Elizabeth, his only child, entered into the cottage and married one Barrow, and lived in the cottage, and they were in quiet possession for three quarters of a year and then sold it. It was argued the cottager was a disseisor, and had no right to build upon the waste, and was at any time removable by the lord; and if he might have been removed within forty days, his long possession gave no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage though never so long could give him no settlement; and if the cottager had no right of settlement, none claiming under him shall be in a better condition. The court held it clearly to be a settlement. And though it was objected that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, "that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession forty days, he thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitaney for forty days: for in those cases the justices of the peace cannot determine his right. This present case is very strong; for the thirty years' possession of the cottager without interruption would have been a good title in an ejectment, and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order that the cottager had a good title in ejectment and in any case but in a real action." Lord C. J. *Raymond* said, "He had known recoveries upon a twenty years' quiet possession, and twenty years' possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this it shall be presumed that the cottager had a license to erect the cottage; but this case goes further; for besides the thirty years' quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *prima facie* it is an inheritance in the daughter; and an estate by disseisin is in law a good estate and a fee simple till it be defeated." The court held that the justices had no jurisdiction in this case, for they could not examine into the title to the land. And the settlement in Wyley was adjudged to be good.

Rex v. Bitton, *Burr. S. C.* 631; 2 *Bott*, 624. The pauper, G. Battman, built a cottage upon the waste without leave of the lady of the manor; was not rated nor paid any taxes; but continued nineteen years and a half in possession. About twenty years ago the pauper was turned out of possession of the cottage by an ejectment, brought by a person claiming the same under a mortgage thereof made by the pauper for 15*l.* And some time after that (which was more than twenty years ago) the pauper and the mortgagee sold the cottage to Williams for 28*l.*; and the pauper had 5*l.* of it. The court were all of opinion that it appeared to be a possession of more than twenty years. He was himself in possession nineteen years and a half; and the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement.

Rex v. Garway, *Burr. S. C.* 632; 2 *Bott*, 623. The pauper, about thirty-five or thirty-six years ago, went to live with his father in a cottage built upon the waste in the parish of A., where his father had then lived about thirty years, and who, soon after the pauper went to live with him, died. The pauper (as eldest son) continued in possession of the premises, and paid an acknowledgment of 2*s* 6*d.* to the lord of the manor for thirty years; but the pauper had no recollection of his father ever having paid an acknowledgment.

The premises were of the yearly value of 50s. The pauper was removed from A., which order was confirmed; but K. B. quashed both orders.

Rex v. Butterson, 6 T. R. 554. R. O. purchased a piece of land, and gave part of it (but without executing a conveyance) to his son in law J. H., who built a house upon it at an expense exceeding 100*l.*, and resided in it without paying any rent or acknowledgment to R. O. for fourteen or fifteen years, when he removed to another house in the same parish, and let the one he had built, and received the rent to the time of his death, which happened three years after. Upon the death of J. H. the pauper (his eldest son and heir) continued to receive the rent and had mortgaged the premises. No claim had been made or rent demanded by R. O. or his heirs. Lord *Kenyon*, C. J. "As twenty years have nearly elapsed since the time when this land was given to the pauper's father, and as no claim has ever since been made either on the pauper or his father, *Rex v. Wyly* (*ante*, 716) is an authority to show that the court ought not to permit the title to the estate to be determined on an order of removal. The strict rules to be observed on the trial of ejectment ought not to be applied to settlement cases. After such a length of time as this, perhaps a conveyance may be presumed to be executed. And in *Rex v. Cold Ashton*, where there had been a possession for nearly twenty years, *Wilmot*, J. said 'There ought not to be a nicety of computation in a settlement case, but the court may presume a conveyance.' And even if no conveyance were executed to the pauper's father, and a claim were now made by Oakden's heir at law, he would perhaps be told in a court of equity that as O. stood by while the pauper's father built on this land, and treated it as his own, he could only resume the possession on certain terms." *Lawrence*, J. "I remember a case where Lord *Mansfield* would not suffer a man to recover in ejectment, who had stood by and seen the defendant build on his lands."

Rex v. Calow, 3 M. & Sel. 22. The removal of B. Maskery, his wife and children, from Wirksworth to Calow, confirmed. Case:—A *prima facie* settlement in Calow being proved by relief given to the pauper's father about thirty years ago, it was proved in answer, that about the same period the grandfather of the pauper gave the pauper's father a piece of land in Wirksworth, upon which the father immediately built a house and lived in it with his family for several years. He then resided in a third parish for some years, during which time he let the house and received the rent for it. Ten years ago he returned to the house, and has resided in it ever since, and never paid any rent or acknowledgment for the house or land on which it stood. The pauper was a part of his father's family at the time the house was built, and continued so for about fifteen years afterwards, when he married, left his father's family, and never returned. The pauper's grandfather resided in Wirksworth from the time when the house was built until his death, about seven years ago, within a few yards of his son, during which time he received occasional relief from Calow. Lord *Ellenborough*, C. J. "It is true that the father, at the time when the son ceased to be a part of his family, had been in possession of the estate for fifteen years; but he was in under some title or other under which he has continued the possession for fifteen years more, and up to the present time; therefore, looking at the whole, we must infer a title in him at the former period. The subsequent possession reflects light back on the title under which he before held; and the court will presume that his possession originated under a title which would have prevented him from being dispossessed at the time when the son quitted his family." *Bayley*, J. "It cannot be said that the father was in without any pretence of title, for the case states that he had a gift of the land." *Dampier*, J. "The subsequent possession legalizes the former possession, and shows that it was of right." Orders quashed.

Rex v. Chew Magna, 10 B. & C. 747. Appeal against an order of justices, whereby J. Naish and wife were removed from Ubley to Chew Magna. Order confirmed. Case:—William Bath, about 1795, being seised in fee of a close of land in the parish of Ubley gave a small piece thereof by parol to his nephew James Naish, the pauper, whereon to build a cottage. Naish, who had no settlement in Ubley, took possession of the spot, and built his

2. *Of Estates acquired otherwise than by Purchase, &c.*

Grantee of land without conveyance, built a house, and occupied it eighteen years, and gained a settlement.

The court will presume conveyance from peaceable enjoyment under twenty years.

When the settlement of the father was derived from twenty years' possession of an estate, a son emancipated before they had expired follows the settlement.

Adverse possession for less than twenty years of an estate at will, under 10*l.* a year, will not give a settlement.

2. *Of Estates acquired otherwise than by Purchase, &c.*

cottage, and inhabited it with his family. In October, 1800, while he so resided in Ubley, his wife and children became ill, and he applied to the overseers of that parish for relief, and received the same, and on their complaint an order for the removal of Naish, his wife and children, to the parish of Chew Magna, was made by two justices of the peace, and Naish was under that order removed and delivered to the overseers of Chew Magna, who relieved Naish from time to time. Naish slept in that parish for one night only, and the next day returned to the cottage in Ubley, from whence neither his wife or children, on account of their illness, had been removed. Naish continued to reside there till about 1810, when Bath told him that he had sold the ground to one Carpenter, and asked Naish to give him free possession, and to sell him his right. Naish was unwilling to do so; but before Naish said any thing, Bath proposed that Naish should receive 3*l.* for giving such possession, and should take away the materials of the cottage. Naish never paid Bath any acknowledgment. Bath paid the 3*l.* to Naish, and Naish pulled down the cottage, carried away the materials, and delivered possession to Carpenter. No writing passed on the occasion. The question for the opinion of this court was, whether the pauper James Naish gained a settlement in Ubley. Lord Tenterden, C. J. "There is no ground for contending that Carpenter's occupation is to be considered a continuance of the estate of Naish; and if that be so, there was no more than a possession for fifteen years. The adverse possession in the cases cited had continued for more than twenty years. There is no authority to show that a residence on an estate at will of a value less than 10*l.* per annum can confer a settlement." Bayley, J. "Undisturbed possession for twenty years confers an estate. It is evidence for a jury to presume a grant. Here there was only possession for fifteen years. It is said possession of Carpenter is possession of Naish. But Carpenter came into possession, not under Naish, but under his uncle Bath." Littledale, J. "I think that Naish was no more than a tenant at will to his uncle. There is no authority to show that a mere tenant at will can gain a settlement by residing upon an estate of less value than 10*l.* a year." Order of sessions confirmed.

The father of a pauper's wife mortgaged a cottage to the parish officers for one thousand years: he died; the pauper claimed the cottage, and resided there undisturbed by the parish for four years: as there was no fraud in his claim, he gained a settlement.

Rex v. Staplegrove, 2 B. & Ald. 527. The facts of the case are stated in the judgment delivered by Bayley, J. "In this case there were two questions, one, whether forty days' residence in a parish in which the pauper had a freehold subject to a lease for years, would be sufficient to confer a settlement by estate? and the other, whether it would be so if the residence were upon that estate and without right? Upon the first point it appeared to us to be settled, especially by *Rex v. Houghton-le-Spring* (ante, 701), that such residence is sufficient; and it was upon the second point only we wished time to consider. Upon that point the facts are these: the father of the pauper's wife had a freehold cottage in Creech; in 1795 he let it to the parish officers for 1000 years, and they took possession. In 1813 he was placed in it by the parish officers, and the pauper's wife came to nurse him. He died there that year, and his daughter continued in the cottage, and at the end of six weeks the pauper joined his wife, and laid claim to the cottage as his wife's property. The parish officers had mislaid the conveyance to them, and therefore could not withstand his claim, and the pauper and his family resided there from 1813 to 1818, when the pauper having become chargeable, and the officers having found the conveyance, they were removed, and the point submitted to us was, whether the pauper gained a settlement by this residence? We are of opinion that he did. The sessions have found no fraud in the pauper or his wife in acquiring or retaining possession; and if we were at liberty to infer fraud, which we are not, there are no premises from which such an inference could properly be drawn. The husband comes to the cottage under a claim of right, and for any thing which appears, he might really believe he had that right. The parish officers who alone can gainsay, do not gainsay it or take any steps to oppose his occupation, but acquiesce in it for more than four years. There is no decision under circumstances in any respect like the present. *Rex v. St. Michael's*, Bath (ante, 711), and *Rex v. Catherington* (ante, 712), were cases where the pauper had nothing which he had a colour for calling his own,

and if not, we must look to the words of the statute whether this is within the mischief against which that statute meant to provide. The 13 & 14 Car. II. c. 12, recites, &c. [here he read the recital and enactment, and added] is then the pauper within the words, the spirit, or the mischief of the provision? He comes to Creech, not for any of the motives this statute meant to repress, but because he has a freehold in the parish; not to prey upon the parish stock, but to live upon that of which he is the freeholder, and as to which he was warranted in concluding that he was entitled to the possession. This is not a case of fraud, nor a case in which the pauper is conscious at the time that he is taking the possession wrongfully, nor a case in which the person entitled to possession takes prompt measures to displace him. Leaving such cases to be decided when they arise, it is sufficient for us to say that in this case there does not appear to have been fraud or consciousness of wrong; and where no measures were taken within the forty days, or afterwards, to dispute the occupation, we are of opinion that the residence was sufficient."

Rex v. Wooburn, 10 B. & C. 846. Appeal against an order whereby Hannah Beal and family were removed from Wooburn to Chipping Wycombe. Order quashed. Case:—In the spring of 1800, Dennis Beal, the husband of the pauper Hannah Beal, and the father of the other paupers, being settled in the parish of Wooburn, inclosed a small piece of waste land from a common in the adjoining parish of Chipping Wycombe, and surrounded it by a bank, on which he planted a quick fence; he held and cultivated this land, subject to such interruption as after mentioned, until Christmas, 1827, when he sold it for 10*l.*, and conveyed it by deed to the purchaser. From the year 1800 to the year 1825, Dennis Beal resided out of the parish of Chipping Wycombe. In the year 1825 he removed to a cottage in that parish, but not on the land in question. In the year 1826 he built a hut on the said land, and was provided with straw to thatch it by one of the overseers of the parish of Wooburn, and up to the time of his building the hut he continued to receive relief from the parish officers of Wooburn. He lived in the hut a year and a half. In the years 1806, 1811, and 1817, the parish officers and freeholders perambulated the parish for the purpose of marking the boundaries and asserting their rights of common by throwing open encroachments on the waste. In the first year they pulled up a large portion of the fence to the said land inclosed by Beal, dug up part of the bank and rode through the inclosure. In the two subsequent years they made a large gap in the fence, and again rode through the inclosure with the same object. In the year 1820 or 1822, but to which of those years in particular the witness could not speak positively, a similar perambulation was made by direction of the lord of the manor, when similar acts were done for the like purposes. It did not appear that Dennis Beal was present on either of these occasions, nor did it appear that any acknowledgment was paid by him to the lord of the manor or any other person during his occupation of this inclosure, nor that either the commoners or the lord of the manor commenced any action or did any other act to assert their rights, except as before mentioned. The question for the opinion of this court was, whether, notwithstanding the interruptions before stated, Dennis Beal, by his occupation and residence upon the land in question, gained a settlement in Chipping Wycombe. Lord *Tenterden*, C. J. "There has been an adverse possession for twenty years, and the husband of the pauper gained a settlement by estate in Chipping Wycombe. The order of sessions must therefore be quashed." Order of sessions quashed.

Rex v. Pensax, 3 B. & Ad. 815. Appeal against an order removing Mary Radford, widow, and her children, from Pensax to Martley. Order quashed. Case:—Mary Radford was the widow of John Radford, who was the illegitimate child of Hannah Radford. After his birth Hannah married William Yarnold, and they resided in Pensax, the child John Radford living with them. In the chapelry of Pensax there is much common or waste land, beneath which there is coal belonging to the lessees (under an old demise) of the Dean and Chapter of Worcester, who are the lords of the manor. Yarnold was often relieved by the officers of Pensax, and they furnished him

2. *Of Estates acquired otherwise than by Purchase, &c.*

Inclosure of waste and occupation for twenty years: Held, a settlement gained, though interrupted by parochial perambulations.

A. inclosed a piece of the waste, and built a cottage, the parish giving him the materials; after fourteen years he gave, by parol, a part of such land to B., and B. built a cottage and

2. *Of Estates acquired otherwise than by Purchase, &c.*

took in another piece of the waste, and occupied them sixteen years; the copyholders, in the course of removing encroachments, twice broke down B.'s fences: Held, that B. gained a settlement by estate.

Lessee for years during three lives held over on a false pretence that one of the lives is continuing: Held, that this is not such an adverse possession as will gain a settlement after twenty years possession.

with materials necessary for the erection of a cottage upon the common, which he accordingly erected about thirty years ago, having for the purpose inclosed an acre of land of about 10*l.* in value. Sixteen years ago he gave part of the land which he had so inclosed to John Radford upon his marriage with the pauper Mary, and Radford then built a cottage upon it. No deed was made between them. After John Radford had taken possession of the cottage and land, he inclosed a small piece of land immediately adjoining (about 5*l.* in value) from the common, and the whole was afterwards thrown together by him. The copyholders (who are accustomed to break down the fences of encroachments once in seven years, to prevent persons inclosing from establishing a right,) twice broke down the fences between the common and the new land thus inclosed by John Radford. The fence between the old and the new inclosure had been previously removed. The persons rode in at one side of the land and out at the other side, but they did not pass over that part which had been given to Radford by William Yarnold. On one occasion the lessees of the minerals under the dean and chapter sunk a coal pit on the land last inclosed by Radford. The question for the opinion of this court was, whether John Radford ever had such an estate in the land given to him by William Yarnold, or inclosed by himself from the waste, as would give him a settlement in Pensax. *Cur. adv. vult.* Lord Tenterden, C. J. now delivered the judgment of the court: "We think this case is not distinguishable from *Rex v. Wooburn* (10 B. & C. 846; *ante*, 719), and the pauper's husband consequently gained a settlement by estate in Pensax. The order of sessions must therefore be confirmed." Order of sessions confirmed.

Rex v. Axbridge, 4 Nev. & Man. 477; 1 Harr. R. 76. Appeal against an order, by which Richard Hooper was removed from Axbridge to Chapple Allerton. Order quashed. Case:—Lord Viscount Weymouth granted to one Martin a lease of a cottage in the parish of Cheddar for ninety years, determinable on three lives, at a rent of 4*d.*; and in 1784 the *cetteur que vies* in lease of 1732 being all dead, the then Lord Weymouth granted to Richard Gilling a lease of the same cottage, therein stated to have lately fallen into his lordship's hands, for a like term, determinable on three other lives, at the same rent. At that time Joseph Wolf, who was in possession under the lease of 1732, claimed to hold the cottage against Gilling, on the ground that one of the three lives in that lease was still in existence, which was not the fact; and he did so hold the same until his death, about twenty-three years ago. On his death his widow, Ann Wolf, retained possession of the cottage, and continued therein until her death in 1827. In 1826 she made a will, and told the person who made it for her she had heard the cottage was Mr. Gilling's. By the will she devised the cottage to her daughter Martha, the wife of Richard Hooper (the pauper), and her heirs, and appointed Martha Hooper her executrix and residuary legatee. The will was duly attested to pass real estate; but no probate thereof was obtained. On the death of Ann Wolf, Richard and Martha Hooper, who had been living with her in the cottage, kept possession of it, and lived there for three years; when Richard Hooper conveyed it, by feoffment and livery, to a purchaser in fee for 8*l.*, it being well worth 40*l.* with good title. No rent has ever been paid by Joseph Wolf, or those claiming under him; but Gilling and his representatives have paid the rent of 4*d.* to Lord Weymouth and his heirs to the present time. One of the *cetteur que vies* in the lease of 1784 is still living. The question is, whether Richard Hooper took such an interest or estate as (coupled with residence) conferred upon him a settlement in Cheddar. If he did, the order of sessions is to be confirmed; if not, the order to be quashed. Lord Denman, C. J. "The question is, whether there is any proof of adverse possession. I do not find it expressly stated, nor do I find any facts from which it can be properly inferred. A lease was granted in 1732 for three lives to Richard Martin. In 1784 it is supposed that the lives are at an end. A new lease is then granted to Gilling, and he pays the rent. Wolf claims to hold under the first lease, on the ground that one of the *cetteur que vies* is still living, and he does so hold; yet Gilling pays the rent during all that time to Lord Weymouth. It can-

not be said that Wolf held under any other claim than this—that the first lease was in existence. Then his wife held the property. What proof is there that she held it adversely? I see none; and even if she had claimed to hold adversely, there was not sufficient length of time to create a title by adverse possession. There is no case which would warrant us in holding that the circumstances which occurred here amount to an adverse possession; and therefore I think that the order of sessions must be quashed.” *Littledale, J.* “I am of the same opinion. In 1784 Lord Weymouth (now the Marquess of Bath) granted a lease to Gilling. At that time Joseph Wolf was in possession. How he came in we do not know; but he claimed to hold the cottage under the first lease, on the ground that one of the *cetteux que vies* was alive. He did not set up any *adverse* claim. He must be presumed to have held under the lease to the time of his death. He left a widow, who continued the possession. It must be presumed that she continued the possession in the same way as Joseph Wolf had done before. She devises expressing that she had some doubts whether it did not belong to Gilling, (but we do not take any notice of that), and appointed her daughter executrix. If she had entered by abatement, and made a will of it, that would have been a different thing, but she does not do so. I do not consider that her daughter acquired any right to the fee simple. She appointed the daughter executrix; but the daughter took no interest in any *term*, for there was none actually existing, except that which was in Gilling, for the old lease was clearly gone in 1784. She could only claim in continuation of the estate which her mother had.” *Williams, J.* concurred. Order quashed.

2. Of Estates acquired otherwise than by Purchase, &c.

III. Of Estate by Purchase for Pecuniary Consideration, affected by 9 Geo. I. c. 7.

1. What is a Purchase within the Statute.
2. Of the Consideration paid.
3. Money laid out on Estate after Purchase.
4. Equitable Interest in Purchased Estate.

3. Of Estate by Purchase for Pecuniary Consideration, affected by 9 Geo. I. c. 7.

1. The Enactment in General; and what is a Purchase.

By the 9 Geo. I. c. 7, s. 5, *No person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place, for or by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30l. bona fide paid, for any longer or further time than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled before the said purchase and inhabitancy therein.*

Purchase money must be at least thirty pounds *bona fide* paid, or party gains a settlement only while he inhabits such estate.

As no settlement can be gained by such purchaser, except whilst he continues on the estate so purchased, he of course can communicate no settlement thereby to his children, for a derivative settlement must be founded on a perfect settlement existing in the person from whom it is derived.

It will also be seen that the terms of the act must be strictly observed, that is, the estate must be actually bought; a gift or license to possess will not suffice.

Rex v. Salford, Burr. S. C. 516; 1 Bla. Rep. 433. Peter White removed from Salford to Over-Norton. Order discharged. Case:—The pauper's father, in 1726, for 29l. purchased a tenement in Salford. The pauper was born there in 1730, and lived with his father therein till about 1754, when he married, and left his father's family, and lived in a separate tenement at Salford, without having gained any settlement but what he derived from his father. Lord Mansfield, C. J. delivered the resolution of the court. “We are of opinion that no settlement of the father was gained in Salford by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case if the act

Children residing with their father upon a tenement purchased by him for less than thirty pounds, gain no settlement.

3. *By Purchase for Pecuniary Consideration.*

A conveyance from a father to his daughter, in consideration of natural affection, without any pecuniary consideration, is not a purchase within the act.

What is a purchase.

Same point, where the grantee was residing under a certificate. See as to this, *post*, *Certificate*.

A conveyance from father to son, in consideration of natural affection, and of ten pounds, gains a settlement, where the real value of the estate exceeds ten pounds.

had never been made: for he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in Salford, was only temporary, and did not extinguish his settlement at Over-Norton. And the only settlement which the son could derive from his father was at Over-Norton; for there could be no derivative settlement from the father at Salford, the father himself having no settlement there, but being only irremovable from his own estate. And this may be illustrated by a supposition, that the son had not resided in Salford, but had gone to live in a third parish, and had there been likely to become chargeable: and the question had arisen, whether he ought to be removed to Salford? He could not possibly in such case have been removed to Salford, because such removal would have been conclusive upon Salford, and he would remain settled there for ever. Which shows that he can have acquired no settlement in Salford by virtue of his father's purchase, even during the time of his father's residence upon it."

Rex v. Marwood, Burr. S. C. 386; 2 Bott, 615. Removal of T. Connibear, and Mary, his wife, from Kentisbury to Marwood, confirmed. Case:—Mary had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden, and plat of ground, at Kentisbury, for the residue of a term of ninety-nine years, then determinable on the death of Joan Slocombe, the consideration of which purchase, originally, in the year 1689, amounted to 20s. Mary and her husband entered upon the premises, and continued thereon for several years, until the lease determined by the death of Joan, upon which they were removed from Kentisbury to Marwood. *Ryder*, C. J. "If I had any doubt I would not give an opinion now. This is not a 'purchase' within the meaning of the act. The word 'purchase' is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was to prevent settlements by purchases for small money considerations. In the present case the husband is not to be considered as a purchaser, and therefore he acquired a settlement in Kentisbury." By the court unanimously, the orders quashed.

Rex v. Ingleton, Burr. S. C. 560; 2 Bott, 621. Richard Speddy, and Rose, his wife, residing under a certificate at Astwick, the father of Rose conveyed to her, in consideration of natural love and affection, a customary cottage at Astwick to the use of herself for life, remainder in fee to her daughter. The paupers entered upon, and continued in possession of, the cottage for sixteen years, and then purchased of their daughter her remainder in fee for 5*l.*, and sold the whole for twenty guineas. On the authority of *Rex v. Marwood* (*supra*) this was held to be clearly a voluntary settlement, and not a purchase within the intent of the statute.

Rex v. Ufton, 3 T. R. 251. John Henwood removed from Ufton to Mortimer. Order quashed. Case:—The pauper came to reside with his father, about twenty-three years ago, in a cottage at Mortimer, which in 1766 the father duly conveyed to him in fee, *in consideration of natural love and affection, and of 10*l.* to him paid* by the pauper. About three years after, the pauper obtained a certificate from Ufton, dated 1st of January, 1770, and afterwards occasionally received relief from Ufton during his residence at Mortimer; his father lived with him on the premises until his death, about eight years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises until 1788, when he sold the same for 50*l.*, and returned to Ufton. Lord *Kenyon*: "In *Rex v. Marwood* (*supra*) it was contended that a purchase, under 9 Geo. I., was to be understood as contradistinguished from *descent*, as in a former case on the subject, (*Rex v. Sawbridgeworth*). (a) But the court exploded that idea, and said that the legis-

(a) In that case (*Burr. S. C. 56*), the father of the pauper, being seised of a copyhold cottage in Aldbury, which let at 25*s.* a year, did, about a year and a half before the removal, surrender to the pauper and his heirs, who were admitted and lived upon it about a year and a half, and then sold for 14*l.* 2*s.* 6*d.*, being

lature only intended to prevent persons who made small purchases for *pecuniary* considerations from gaining settlements, but that donations from a father to a child did not come within the statute. Now in this case we are bound to take notice that the conveyance was in consideration of natural love as well as 10*l.*, and we cannot suppose that 10*l.* was the real value of the estate, for there are circumstances to show the contrary, having been afterwards sold for 50*l.* This being a donation from a father to a son, is clearly not a purchase within 9 Geo. I. c. 7, notwithstanding part of the consideration was in money. And though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at Mortimer." Order of sessions reversed. (See *Rex v. Lydlinch*, 4 B. & Adol. 150; 1 Nev. & M. 33; *Rex v. Piddlehinton*, 3 B. & Adol. 460, *ante*, 575; *Rex v. Hatfield Broad Oak*, 3 B. & Adol. 566.)

Rex v. Warblington, 1 T. R. 241. Removal from Havant to Warblington. Order confirmed. Case:—William Bridger, father of the pauper, came to Havant with a certificate from Warblington. John Moody, lord of the manor of Havant, by copy of court-roll, in 1748, granted to William and his heirs, one parcel of waste ground, called the Gravel Pit, which did not appear ever to have been granted before. William built a house thereon, and lived therein for several years as owner; he afterwards borrowed 100*l.* of Mary Roper, and surrendered the premises for securing the same; and on the money not being paid, she was admitted in 1763. She sold her interest to John Hammond, who was admitted. After the death of William, his heir-at-law sold his equity of redemption to Hammond for 20*l.* 17*s.*, and surrendered the same. It appeared by the court books that William was admitted on the lord's grant to one parcel of land, called the Gravel Land, and in the copy of his admission were these words, "*fine one shilling, heriot one shilling, quit-rent one shilling.*" Moody's steward proved that Mr. M. was used to grant small parcels of the wastes of the manor for small pecuniary considerations, but he never knew him make such grants without. The value of the land at the time of the grant did not exceed 30*s.* or 40*s.* and William was at that time a very poor man. It was not customary to express the consideration, if any, in the surrenders. It did not appear whether any pecuniary consideration was given for the grant, or it was voluntary and without any consideration: it further appeared that in the margin of all the copies was inserted, "*fine 1*s.**" Willes, J., said, "That the question was, whether this grant was a voluntary grant, or made for a valuable consideration? That the proof lay on the appellants to show it was a voluntary grant, for it was incumbent upon a certifying parish to get rid of the certificate: that if that could only be done by presumption, it must stand good, for that the court could not presume one way or the other. But if the court could presume either way, it must be that this was a purchase. That, however small the consideration, they would hold it to be a purchase: that this appeared to be a grant for a small pecuniary consideration, and therefore not a voluntary grant: and being a purchase under 30*l.* did not give a settlement since stat. 9 Geo. I. Supposing it true, that the fine (a) is a fee for alienation, that is no answer to the heriot and rent reserved: for if a person meant to make a free gift, he would not reserve a heriot or rent. As to the objection, that this land had never before been demised by copy, however defective the original grant might have been,

3. *By Purchase for Pecuniary Consideration.*

A conveyance for natural love and ten pounds to a son, the estate being worth more, is not a purchase.

A grant of waste land by a lord of a manor, under thirty pounds value, the fine being one shilling, heriot one shilling, and quit-rent one shilling, will not give a settlement.

the full value; it was urged that this estate was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father and a descent. But the court denied it, without so much as making a rule to show cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was to prevent persons gain-

ing settlements who were any ways likely to be chargeable, and therefore provided that they should be able to lay out 30*l.* in a purchase. And both the orders were confirmed.

(a) It had been urged, that payment of a fine was proof of purchase, *St. Paul's Walden v. Kempston*, (*post*, 728,) and *contra*, *Rex v. St. Mary, Whitechapel*.

3. *By Purchase for Pecuniary Consideration.*

Where there is no custom for that purpose, the lord of a manor cannot make a new grant of copyhold; and if he does, the grantee acquires thereby no settlement by estate. And it was held that a grant by the lord of copyhold land, paying a yearly rent of two shillings and sixpence (which rent, in a subsequent part, was called a quit-rent), is a purchase within 9 Geo. I. c. 7, and being under thirty pounds, confers no settlement.

Grant of a license from the lord of a manor to erect a cottage, rendering an annual rent of ten shillings and sixpence as quit-rent, and also a license to inclose a piece of ground for a garden to said cottage, and building a cottage thereon and residing in it a year and a half: Held to be a mere license, and not a grant of any interest in land, and conferred no settlement.

License by lord not a purchase.

there has been so long a possession that the presumption is strong that it was good." *Ashhurst, J.*, said, "That a purchase was the acquisition of something for an equivalent: a *quid pro quo*. And that was so in this case."

Rex v. Hornchurch, 2 B. & A. 189. Removal from Hornchurch to Purleigh. Order quashed. Case:—By grant, May 13, 1799, James Thurtell, the father of the pauper, obtained from the lord of the manor a piece of the waste in Purleigh, where he built three cottages. The grant was, "To this court came J. T. and S. his wife, and prayed to be admitted tenant to all that parcel of land, being part of the waste of this manor, containing about half a rood, with the cottage thereon, lately built, paying to the lord the yearly rent of 2s. 6d., to whom the lord, with the consent of the homage, granted and delivered seisin, to hold unto J. T. and his wife, and to the heirs of the survivor, at the will of the lord, according to the custom of said manor, at the yearly quit-rent aforesaid and by suit of court; and he giveth to the lord for fine for his admission nothing, of the special favour of the lord, and so, saving all right of the lord, he is admitted tenant." *Abbott, C. J.*, "I think that this grant was not a valid conveyance of the copyhold estate, because there is no custom stated for the lord to make a new grant of copyhold within this manor. Unless that custom exists, there can be no copyhold except where the land has been at all times demised or demisable by copy of court-roll. The lord therefore had no right to make this grant. But even if the grant were good, I should still think that this case fell within the 9 Geo. I. c. 7, for here the land was originally demised for a mere money consideration to be paid annually, and the sum stated in the case was a full consideration for all that the lord granted at the time. I cannot distinguish this case from *Rex v. Warblington* (*ante*, 723), which must govern our present decision. Then if the case falls within 9 Geo. I. c. 7, it is clear that the consideration was less than 30*l.*, the sum required by the act." Order confirmed.

Rex v. Horndon-on-the-Hill, 4 M. & Sel. 562. Removal from Orsett to Horndon-on-the-Hill. Order confirmed. Case:—The pauper applied to the lord of the manor for license to erect a cottage on the waste in Orsett. In the court rolls was this entry: "Manor of Orsett, 9th November, 1805. At a general court baron, the lord of the manor granted license to Benjamin Brad to erect a cottage on a piece of land, containing one rood, in the lane leading &c., rendering an annual rent of 10s. 6d. at Michaelmas in every year, as a quit-rent for the same." No other consideration was paid. The pauper erected a cottage at an expense of more than 30*l.* on the piece of ground, and some months afterwards applied to the lord for a piece of ground for a garden. As to that, this entry was made: "24th March, 1806, (reciting the former entry); at this court the lord of the manor granted license to B. Brad to inclose a piece of ground for a garden adjoining the cottage, containing ——— roods." No consideration was paid for this piece of ground, and both were parts of the waste of the manor, and their value did not exceed 5*l.* After the building of the cottage, the pauper resided on the premises about a year and a half, and then sold them to one Robinson, of which the following entry was made in the court rolls: "3rd June, 1809, (reciting the grant of the first license and the grant of the second), it was at this court presented that the said B. Brad had erected the cottage, and inclosed the ground, and had sold it unto Robinson for 40*l.*, whereby happened to the lord an alienation fine of one guinea, which had been paid." Robinson sold the premises to Bonham, of which the following entry was made: "7th June, 1813. At a general court baron then held, the homage presented that since the last court, Henry Bonham, esq. purchased of Wm. Robinson a cottage erected on the waste by B. Brad, and also a garden adjoining, granted by the lord, whereby there happened to the lord an alienation fine, which has been paid." None of these entries were stamped, and this was the only evidence of title produced. There was no evidence that these two pieces of waste land, or either of them, had ever been demised by copy of court-roll, or that there was within the manor any custom to create copyholds, or to grant any part of the waste thereof to hold as in the nature of copyhold. *Lord Ellenborough, C. J.* "A license is not a grant, but may be recalled immediately; and so might this license the day after it was granted. We cannot take into

our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other. This was a mere personal license, and not a grant by copy of parcel of the land, as *Rex v. Warblington* (*ante*, 723.) Here the pauper never had a more perfect estate than the license gave him, that is, a permission to occupy." *Bayley, J.* "We cannot know how a court of equity would deal with this case; probably the utmost that it would do would be to grant an injunction, if an ejectment was brought. But here is no grant of any interest in land; I cannot say that the pauper took any estate; and therefore this would be a new species of settlement." Order of sessions confirmed.

Rex v. Hagworthingham, 1 B. & C. 634; 3 D. & R. 16; 1 D. & R. Mag. Ca. 476. Order of removal of E. Turner from Stainton to Hagworthingham confirmed. Case:—In 1798, the commissioners for the inclosure of Hagworthingham, by their award allotted to the Earl of Manvers, as lord of the manor, an allotment, as compensation for his right in the soil of the waste lands. In 1809, Goodwyn applied to Lord Manvers for leave to build a house upon the waste in Hagworthingham. Lord Manvers gave him liberty in writing. Goodwyn built on the waste by the road side, in the same year, a blacksmith's shop, which two years afterwards he sold to Bayley, who sold it to the pauper for 30*l.* No deed of conveyance was executed to the pauper. The pauper converted the shop into a dwelling-house, where he resided during five years, and then sold it to Wright for 34*l.* The pauper continued to live therein, as tenant to Wright, for two years longer. During the five years that the pauper resided in the house as owner, he paid 1*s.* a year to Lord Manvers as lord of the manor. The surveyor of the highways once demanded this 1*s.* to be paid to him, but it was never so paid. On the pauper quitting the house, Wright went to live there, and it is let by Wright to a tenant for 2*l.* 18*s.* a year at the present time. No adverse claim has ever been made. *Abbott, C. J.*, delivered judgment. "It was contended, that this was a settlement obtained by purchase of an estate or interest in the parish for a consideration of 30*l.* paid. Some discussion arose as to the nature of the estate or interest, by the purchase whereof a settlement may be acquired. But we think the enquiry into that point unnecessary in this case; because upon the facts stated, and on the authority of *Rex v. Horndon-on-the-Hill* (*ante*, 724), we think there has been no purchase of an estate or interest of which we can take notice. The pauper after his purchase paid 1*s.* a year to Lord Manvers, but no such payment appears to have been made either by Bayley or by Goodwyn; therefore although the pauper might in consequence of this payment have acquired the character of a tenant from year to year, yet there is nothing to give that character either to Bayley or Goodwyn, and the matter purchased by the pauper is the same as in the case referred to. It was there decided, that a license to occupy does not operate as a grant, nor confer any legal title; and as to equitable right or title, the observations made by Lord Ellenborough are unanswerable: 'We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other.' Upon the ground therefore that this was not a purchase of any estate or interest in the land or building, we are of opinion that no settlement was gained." Order of sessions quashed.

Rex v. Martley, 5 East, 40. Removal from Doddenham to Martley confirmed. Case:—On the 25th of November, 1754, the dean and chapter of Worcester granted to H. B., the grandfather of the pauper, a lease for lives of a cottage and garden, at the yearly rent of 2*s.* 6*d.* At his death, leaving no will, he was succeeded in possession by his son William, (the pauper's father,) who afterwards died leaving a will, devising the premises to his wife

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A. built a house on the waste of a manor by license from the lord, resided in it two years, and then sold it to B. The latter sold it to C. for thirty pounds, but no conveyance was executed. C. resided in it five years, and paid one shilling per annum rent to the lord, and then sold his interest. No adverse claim was made: Held, that C. did not acquire by purchase an interest or estate sufficient to confer a settlement within the statute.

Where the purchase is under 30*l.* the pauper is not removable from his estate.

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for life, remainder to W. B. the pauper. The pauper came at the end of two years to reside with his mother on the premises till he married, (February 2, 1790), when she demised to him the premises at a yearly rent, and went to reside elsewhere, leaving the pauper in the sole occupation. On the 27th August, 1795, the second life died. On the 13th of July, 1798, the mother of the pauper, who was tenant for life under the will of the pauper's father, died. The pauper continued in possession till November 26th, when on payment of a fine of two guineas, a new lease was granted to the pauper at a new rent of 1s., for three new lives, still existing. At this time the lives in the first lease were all extinct. The pauper's residence on the premises continued till the time of the removal. Lord *Ellenborough*, C. J., said, "That there would be difficulty in deciding that this was a purchase under 30*l.* within the statute: but he asked how, admitting that, and presuming the third life under the first lease to be extinct, (she not having been heard of for thirty years), this order removing the pauper *from his own estate* could be supported?" To this it was answered, that where a man applies for relief, he must be taken to consent to all things necessary to afford him that relief in the due course of law, and consequently to an order of removal to his last legal settlement. But the court held that such a person was altogether irremovable, whilst he resided on his own estate.

2. *Of the Consideration Paid.*

2. *Of the Consideration Paid. (a)*

The consideration for the purchase must amount to "*the sum of 30*l.* bonâ fide paid.*"

Where the purchase money mentioned in the deeds was twenty-eight pounds, but the sum *bonâ fide* paid was thirty pounds, a settlement is acquired.

Rex v. Scammonden, 3 T. R. 474. Removal from Scammonden to Soyland. Case:—The pauper agreed with Harrison for the purchase of an estate in Rishworth for 28*l.*, and the consideration mentioned in the deeds and in the receipt indorsed was 28*l.*, but by parol evidence it was proved, that before the deeds were executed the vendor declared that as the agreement was not in writing he was not bound by it, and having since had 30*l.* offered for the estate he would not take less, nor would he execute the deeds unless the purchase-money were made up that sum. Upon which the pauper advanced 1*l.* 15*s.* more, which, with 5*s.* owing from Harrison to the pauper, it was insisted made up the sum of 30*l.*, but the deeds were not altered, and the consideration therein mentioned was left according to the original agreement, viz. 28*l.* The sessions were of opinion, that no parol evidence could be given (*b*) to contradict the consideration mentioned in the deeds. The estate purchased was the estate of Harrison's wife: and there was a covenant from Harrison that he and his wife would levy a fine at the cost of the pauper; towards the expense of which the pauper left in the hands of his attorney four guineas. The pauper resided above three months upon the premises, and afterwards sold them to his brother. To this conveyance Harrison and his wife were parties; and it recited the covenant to levy a fine; but as such a fine had not then been levied, it was agreed that instead thereof, Harrison and his wife should acknowledge and levy a fine of the premises unto the brother in fee, which was in 1787 levied; part of the expense whereof was discharged by the four guineas so left in the hands of the attorney by the pauper, and the other part was paid by the brother. And the sessions being of opinion that the four guineas was to be considered as part of the consideration under the act, and that the pauper by such purchase gained a settlement, discharged the order. Lord *Kenyon*, C. J. said, "It was clear that the party might prove other considerations than those expressed in the deed. It is permitted in all cases of covenants to stand seised to uses. And in *Filmer v. Gott* (7 *Brown's Parl. Cases*, 70), where the considerations mentioned in the deed were 10,000*l.* and natural love and affection, the lords commissioners of the great seal directed an issue to try whether natural love and affection formed any part of the consideration, the estates being worth

(a) See also *Rex v. Matlock*, post.

(b) As to the admissibility of this evidence, see *Rex v. Llangueinor*; *Rex v. Lanidon*; *Rex v. Skiffington*; *Rex v. Wickham*; *Rex v. Great Wakering*, ante, 579.

near 30,000*l.* On an appeal to the House of Lords this was confirmed; and the jury on the trial of the issue finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the Lord Chancellor." Order of sessions confirmed.

Rex v. Cheadle, 3 Bar. & Adol. 833. Appeal against an order whereby W. Smith and family were removed from Cheadle to Scropton and Foston. Order quashed. Case:—The settlement of the pauper, W. Smith, at the time of his marriage in 1808, was in the appellant township of Scropton and Foston. The appellants, in order to establish a subsequent settlement by estate in Cheadle, the respondent parish, proved that John James, the father of the pauper's wife, had been seised in fee of a house and some land in Cheadle, on which he resided with his family (a wife and five children), and of which he continued in possession till 1807, when he died intestate, leaving his eldest son Simon James his heir at law. It had been agreed in the lifetime of John James, by all the members of the family, including Simon James, that the four younger children (of whom the pauper's wife was one) should have a parcel of the said land allotted to each of them, in order that they might build houses thereon respectively, when they could raise the money. In pursuance of this agreement, a portion of the land was staked out for the pauper to build on a short time after his marriage, and he built a cottage thereon upwards of twenty-one years since, in which he resided sixteen or seventeen years, and then sold it for 60*l.* to one John Higgs, who still has it. The land so staked out was a small plot, about four yards by six or seven, and the full value of it in fee before the cottage was built was two guineas or two guineas and a half. When the cottage was built, Simon James (the eldest son of John), who lived within a few yards, assisted the pauper in staking out the land, and in doing some of the work at the foundation. On the part of the respondents, indentures of lease and release of the 6th and 7th of January, 1815, were produced and proved, for the purpose of showing that this land had been purchased by the pauper for a money consideration not amounting to 30*l.* The release was between Simon James (therein described as eldest son and heir at law of John James deceased) of the first part, William Smith, the pauper, of the second part, and John Moreton (therein described as a trustee nominated by and on behalf of the said William Smith) of the third part; and after reciting, that "the said William Smith some time since agreed to purchase from the said Simon James the plot or parcel of land thereafter mentioned, and had paid the said Simon James the sum of 2*l.* 2*s.* as consideration for the same, and lately erected a dwelling-house thereon, but no conveyance thereof had yet been made," it was witnessed, that for and in consideration of 2*l.* 2*s.* to the said Simon James in hand paid by the said William Smith at or before the sealing and delivery of these presents, the receipt whereof Simon James did thereby acknowledge, and thereof did acquit and for ever discharge the said William Smith, his heirs, &c.; he the said Simon James did grant, bargain, &c. the said plot of land, and the said house erected thereon, to the pauper, his heirs and assigns, &c. Each of these deeds was stamped with a 15*s.* stamp. The evidence of the pauper, and also of one Jeremiah Robinson (who was not a party to the deed), was then tendered on the part of the appellants, and objected to on the other side, but received by the court, to show that the consideration stated in the deed was not paid, nor intended by the parties to be paid; and that the deed was only made for the purpose of confirming the pauper's title to the plot of land which had been allotted to him shortly after his marriage, under the parol arrangement between John James and his children. The sessions found that the consideration mentioned in the deed was not paid, nor intended to be paid. The questions for the opinion of this court were, 1st, whether the last mentioned evidence was properly admitted? and if it was, then, 2dly, whether on all the facts of the case, the pauper acquired a settlement in the respondent parish? Lord Tenterden, C. J. "I think a settlement was gained in Cheadle. The appellants proved that John James, the father of the pauper's wife, being seised in fee of a house and land in Cheadle, and having several children, it was agreed among them in

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Recital in a conveyance that the pauper had agreed to purchase the above parcel of land of S. J. and had paid him two guineas for the same, but no conveyance thereof had yet been made; and then expressed that in consideration of that sum S. J. bargained and sold, &c. : Held, that the appellants were not estopped by the recital of this deed from giving parol evidence, that the consideration stated in the deed was never paid or intended to be paid, and that the deed was made for the purpose of confirming the pauper's title to the land allotted to him in virtue of the above-mentioned parol agreement, and that consequently he gained a settlement.

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his lifetime that a part of the land should be allotted to each of them. One of the children married the pauper in 1808, and soon after, in pursuance of the agreement, a portion of the land was staked out, upon which the pauper built a house, and after residing there seventeen years he sold the house for 60*l.* There having been twenty years' possession, the case thus far showed such an estate as gave the pauper a settlement. To avoid this settlement by estate, the parish officers of Cheadle proposed to show, by the deed of 1815, that the pauper's title to it accrued by a purchase for a money consideration not amounting to 30*l.* That deed recited, that Smith had agreed to purchase the land for the consideration of two guineas. The other parish alleged in answer that the recital was not true, and that the real consideration was not a money consideration; and they gave evidence that the two guineas were not paid, or intended to be paid, and that the only object of the parties in executing this deed was to confirm the pauper's title. The objection is, that evidence to contradict the statement of the consideration in the deed ought not to have been admitted. Now, the parties to the deed might be estopped by it from saying that this was not a purchase for a money consideration; but the parish officers, who were strangers to it, are not. If that were otherwise, the greatest inconvenience and injustice might arise, because a settlement might be acquired or not according to the language used by parties in an instrument of this nature. The evidence was, in my opinion, properly received, as showing, not that the deed was void, but that this was not a purchase for a money consideration." *Littledale, J.* concurred. *Parke, J.* "It is quite clear, that although the parties to this deed were estopped by it, strangers were not, and consequently the parish officers might show the real nature of the transaction. If this were not so, parishes might be burthened with settlements for which there was no colour. It is clear that a settlement was gained in this case by an estate voluntarily conveyed to the pauper." *Taunton, J.* concurred. Order of sessions confirmed.

A purchase of thirty pounds, part of which was paid by the parish officers of another parish, is not taken to be fraudulent, unless so stated.

The expenses of the surrender of a copyhold estate, paid by the purchaser to his attorney, are not part of the consideration.

The fine to the lord is a part of the consideration.

St. Paul's Warden v. Kempton, Fol. 238. Case:—A person purchased a copyhold tenement in St. Paul's Warden, which, with the fine and fees paid to the court, amounted to 30*l.*; and it appeared by the same order, that the officers of the parish of Kempton had given him 40*s.* towards paying his fine and fees. It was insisted that this was fraudulent and not a good purchase. But by the whole court: "We cannot take notice of its being fraudulent, unless the justices had adjudged it so."

Rex v. Cottingham, 7 B. & C. 603; 1 M. & R. Mag. Ca. 137. Order of removal of W. Hardy from Bishop-Burton to Cottingham confirmed. Case:—In 1813, Hardy, the father of the pauper, agreed with E. Page for the purchase of a copyhold cottage at Bishop-Burton. It was agreed that Hardy should pay 22*l.* and all the expenses attending the sale. Upon these terms the purchase was made. In 1813, the cottage was surrendered to Hardy the father; in 1814 he was duly admitted, and has ever since continued to reside in it. The amount paid was 22*l.* to the vendor; 3*l.* 10*s.* the fine to the lord of the manor; 1*l.* 13*s.* to the steward of the manor for his admission copy; and 6*l.* 12*s.* 6*d.* to Hardy's attorney, for the expenses of the surrender; making a total of 33*l.* 15*s.* 6*d.* *Bayley, J.* "This case admits of no doubt. The question is, what was the consideration for the purchase *bonâ fide* paid within the act? I think the sum given to the seller for his interest in the land, and to other persons whose concurrence was necessary to make the sale valid and effectual, was the consideration for the purchase. The fine paid to the lord and the fees paid to the steward, in my opinion, form part of the consideration. But the sums paid to the vendor, the lord, and steward, do not amount to 30*l.* The expenses of the surrender paid by the purchaser to his own attorney, were no part of the consideration for the purchase. The cases cited are distinguishable from the present. In *Rex v. Scammonden* (*ante*, 726) the purchaser paid 30*l.*; for he paid the expenses of levying a fine, which it was necessary for the seller to levy to complete the title, and which he ought to have paid for, if the purchaser had not agreed to pay. In *St. Paul's Warden v. Kempton* (*supra*), 30*l.* was paid, including the fine to the lord and the fee to the steward." *Littledale, J.* "I think the consideration for the purchase was

the sums paid to the seller and to the lord. The lord has an interest in the land, and the fine may be considered as paid to him for the purchase of part of his interest in it. I doubt whether the fee to the steward can be considered as part of the consideration for the purchase. The steward has no interest in the land. But it is unnecessary to decide that, because the money paid to the seller, the lord, and the steward, does not amount to 30*l*." (a)

Rex v. Tedford, Burr. S. C. 57; 2 Bott, 666. Removal from Waddingham to Tedford. Case, laid down before the judge of assize:—Francis Gill contracted with John Atkinson for a house in Waddingham for 39*l*., which was conveyed to Gill and his heirs. Gill paid 9*l*., and Isaac Bristol paid the remaining 30*l*., to Atkinson, by Gill's order. Conveyance, dated May 2, executed May 19, 1730. June 18, 1730, Gill mortgaged the premises to Bristol. Gill continued in possession about four years after the mortgage. Then Bristol entered, by virtue of the mortgage and release of the equity of redemption. The order of sessions recites, that whereas the judges of assize had not time to hear it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth adjudge that the purchase made by Gill was fraudulent; but that the appellants are no ways concerned in the fraud. By Lord Hardwicke, C. J. "This case doth not appear to be within the act; for the act is confined to purchases under 30*l*. *bonâ fide* paid. Now the consideration was 39*l*. and *bonâ fide* paid to the vendor. And it would be pretty hard to say that the justices had a power upon this act to inquire *whether or no the purchaser borrowed the money*. It is a common case to borrow money to make up the price. And as to the fraud, it is true that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict. The residing four years is a very material circumstance in this case: it is frequent for persons to purchase, having no ready money to do so. It does not appear how much, or that any of the purchase-money was borrowed. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding; but when they state the facts particularly, the matter is as much open for our determination upon it as it was for theirs." And the whole court was of opinion that here was no sufficient evidence of fraud. Orders quashed.

Rex v. Chailey, 6 T. R. 755. W. Shaw removed from Chailey to Newick. Order quashed. Case:—In November, 1786, Shaw agreed to purchase a copyhold messuage in Chailey of R. Hale, (by whom it had been mortgaged to R. Coppard to secure 50*l*.,) and to pay for Hale's interest therein 10*l*. The pauper paid Hale 10*l*., who, on the 4th November, 1786, surrendered the premises to the pauper, subject to the conditional surrender made to Coppard for securing 50*l*. In May, 1790, the pauper agreed with J. Heath to borrow of him 50*l*. on security of the estate, in order to pay off the mortgage to Coppard; and on the 8th of May the conditional surrender to Coppard was discharged. On the same day the pauper made a conditional surrender of the premises to Heath, for securing the re-payment of 50*l*. which Heath had advanced to discharge the mortgage to Coppard. On the 4th November, 1795, the pauper sold the estate for 80*l*., being 30*l*. beyond the amount of the mortgage. The pauper resided in the cottage from the time of his purchase until the re-sale. By Lord Kenyon, C. J. "By 9 Geo. I. c. 7, no settlement can be gained by residing on a tenement that is purchased for less than 30*l*.; but it was decided in *Rex v. Tedford* (*supra*), that though the party cannot pay the money out of his own fund, if he can borrow it on credit that is sufficient to satisfy the words of the statute. It has been argued, that this was only an assignment of the original mortgage from the first to the

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Purchase for thirty-nine pounds, though thirty pounds thereof was borrowed on mortgage of the premises, gains a settlement.

Purchase of a cottage for sixty pounds, which was then mortgaged for fifty pounds, and payment afterwards of that fifty pounds, by means of borrowing the same, will gain a settlement, though the estate be mortgaged for the fifty pounds the same day.

(a) In the report of this case, in 1 M. & R. Mag. Ca., Littledale, J. is reported to have said, "that the fee of the steward is part of the consideration." This is at variance with the above report, and with

a MS. note of this case in possession of the Editor. In the case as reported in 1 M. & R. 439, it is merely stated, "Littledale, J. concurred," Holroyd, J. was absent.

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Purchase for thirty-nine pounds seventeen shillings and sixpence, the premises being then mortgaged for thirty-two pounds, which was never paid, is a purchase only for seven pounds seventeen shillings and sixpence *bonâ fide* paid, and confers no settlement.

second mortgagee, and that the mortgage interest never was in the pauper: and to be sure if that interest never were in the pauper, it would be difficult to say that it conferred a settlement on him. Then it was said, that though the mortgage interest did pass through the pauper, it was merely the mode of transferring a copyhold interest from one person to another, and that this interest did not vest in the pauper; but the latter part of the proposition is not true; the estate did not pass immediately from the first to the second mortgagee; there was an interval, though a short one, in which the estate was vested in the pauper, and he conveyed it to the second mortgagee. An attempt, however, was made to distinguish this case from *Rex v. Tedford*, by saying, that there the legal estate was in the pauper for a longer period than in the present case, but that cannot furnish any real ground of distinction. If this had been a freehold estate, every judgment signed against the pauper, and properly docketed, would have attached on this estate. Although when I first read this case I hesitated whether this could confer a settlement on the pauper, yet, on consideration, I think it is more safe to support the decision of *Rex v. Tedford*, from which I think this cannot fairly be distinguished, and which has been adopted in subsequent cases, than to introduce nice and artificial distinctions." Order of sessions affirmed.

Rex v. Mattingley, 2 T. R. 12. Removal from Mattingley to Heckfield. Order quashed. Case:—On the 18th June, 1769, the pauper came to Mattingley with a certificate from Heckfield, and lived there till the removal. Previous to August, 1780, he contracted with John Ironmonger for the purchase of a copyhold tenement at Mattingley, which had been mortgaged to T. Bailey for 32*l.* which money was unpaid at the time of making the contract; the pauper was to pay 39*l.* 17*s.* 6*d.* for the tenement, which was inclusive of the 32*l.* due on the mortgage, and the pauper paid to Ironmonger 7*l.* 17*s.* 6*d.* which with 32*l.* to be paid to Bailey, made the sum of 39*l.* 17*s.* 6*d.* On the 3rd of August, 1780, the pauper was admitted on the surrender of Ironmonger, subject to a mortgage surrender to Bailey, and the pauper entered and continued in possession for four years, during which he paid Bailey two years interest, which was all the interest Bailey received after the purchase. He never paid off the mortgage money: and in 1784 delivered up the possession. *Ashhurst*, J. said, "The only question was, whether the purchase made by the pauper was in fact of the value of 30*l.*? The pauper only purchased the interest of the mortgagor subject to the mortgage. Now the estate was mortgaged for 32*l.*; therefore the mortgagor's interest subject to that was only 7*l.* 17*s.* 6*d.*, which was the whole of the pauper's purchase. The estate having been mortgaged for 32*l.* the instant the mortgagee got into possession he might have gained a settlement upon it; if so, the mortgagee was a purchaser for 32*l.*, and the pauper only purchased subject to that charge. In the *Tedford* case (*ante*, 729) it was only decided that if a man purchased an estate for 30*l.* *bonâ fide* paid, the court would not enquire how the purchaser came by the money, but here the purchaser did not *bonâ fide* pay 30*l.*; and that circumstance distinguishes this case from *Rex v. Tedford*. If the pauper, previous to the contract for purchase, had given the mortgagee a personal security for the mortgage money, then he would first have bought an estate for 30*l.*, though part of the purchase money would have been borrowed on mortgage; then the statute would have been satisfied, and the pauper have gained a settlement." *Grose*, J. "It is to be observed that the statute does not give a settlement to a man *purchasing* an estate of the value of 30*l.* It has been argued, that if the vendor has been satisfied with 30*l.* it is a purchase. But that is not the true construction of the act; for the question must be, whether the purchaser is able to pay, or has *bonâ fide* paid, 30*l.* I agree that if the purchase money has been *bonâ fide* paid, the court would not have enquired how the purchaser came by the money, nor whether he mortgaged the estate for the payment of it: that might be a question of fraud for the consideration of the sessions: and if fraudulent, no settlement could be gained. In order to constitute a purchase within 9 Geo. I., the sum of 30*l.* must not only be paid in point of fact, but must be also *bonâ fide* paid." Order of sessions quashed.

Rex v. Olney. 1 M. & S. 387. Order of removal of Richard Mayes from Olney to Earl's Barton, discharged. Case:—The pauper came to Olney by a certificate, dated July, 1788, directed to that parish from Earl's Barton. Whilst the pauper was residing in Olney under the certificate, about September, 1800, and some time prior to the feoffment hereinafter mentioned, he agreed with Michael Hinde to purchase a messuage of him in Olney at 52*l.*, if Hinde would allow 40*l.*, part of the 52*l.*, to remain upon mortgage, to which Hinde consented; by a deed of feoffment of the 8th of October, 1800, Hinde, in consideration of 52*l.* therein mentioned to be paid by the pauper, conveyed to him the messuage in fee; and upon the deed there was indorsed a receipt for 52*l.*, but in fact only 12*l.* were paid to Hinde, and the remaining 40*l.* was secured to him by a mortgage, bearing date the 9th of October, 1800, by which the pauper pursuant to the agreement demised the messuage to Hinde for 1000 years, in consideration of 40*l.* in the deed of mortgage mentioned to have been paid by Hinde to the pauper; and there was a proviso for the deed's becoming void upon payment of 40*l.*, with interest. The feoffment and deed of mortgage were both executed at the same time, and remained together with the title deeds in the custody of Hinde. The pauper immediately entered into possession, and continued to reside there, and paid the interest upon the 40*l.* to Hinde, until the execution of the deeds hereinafter mentioned, but during such time never had the ability to pay off the principal. About a month before the 12th of June, 1812, the pauper agreed with Thomas Bowden to sell to him the messuage, in consideration of 60*l.*, and soon afterwards Bowden paid to Hinde the 40*l.* in discharge of his mortgage, and in part of his (Bowden's) purchase money, and received from Hinde the title deeds, together with the feoffment and mortgage. Afterwards, by indorsement on the indenture of mortgage, bearing date the 12th of June, 1812, Hinde, in consideration of 40*l.* to him therein mentioned to be paid by the pauper, assigned the 1000 years to the pauper, and by deeds of lease and release, dated the 12th and 13th of June, 1812, the pauper conveyed the messuage to Bowden in fee for 60*l.*: and 20*l.*, being the balance of the purchase money, were then paid by Bowden to the pauper. The indorsement and indentures of lease and release were all executed at the same time. It was urged that when the mortgage was ultimately discharged on June 12, 1812, it became a *bona fide* payment of the whole sum. But Bayley, J. observed that "the pauper did not reside forty days after that time." Grose, J. (Lord Ellenborough, C. J. *absente*.) "The question is, whether this was a purchase for 30*l.* *bona fide* paid, so as to satisfy the stat. 9 Geo. I. where the purchase was contracted for upon security to be given for part of the purchase money and such part never paid by the purchaser? The case in substance states that the premises were mortgaged for 40*l.* of the purchase money, and that that money was not paid. But I think that the consideration must be *bona fide* paid at the time of the purchase, in order to satisfy the statute. Then it is clear that this was not the purchase of an estate for 30*l.* paid at the time, the consideration money having remained upon security." Le Blanc, J. "The 9 Geo. I. enacts, that no person shall gain a settlement by virtue of any purchase of any estate whereof the consideration doth not amount to 30*l.* *bona fide* paid. The question arises on the purchase. The purchase money amounted to 52*l.* of which 12*l.* only were paid at the time, the rest was left on mortgage to the vendor. That circumstance distinguishes it from the cases cited, where the party purchasing paid the whole money to the vendor by borrowing a part *aliunde*, so that there he had credit to borrow of others. In *Rex v. Mattingley* (*ante*, 370) it was held, where the purchaser contracted for the purchase of a copyhold estate for 39*l.* which was mortgaged for 32*l.* and paid only 7*l.* and was admitted subject to the mortgage, that it was not a purchase for 30*l.* *bona fide* paid, so as to take it out of the statute. That is a direct authority on this part of the case. But it has been argued upon a supposed difference, inasmuch as the purchase money was ultimately paid in the subsequent transaction with Bowden. But how does that stand? All that was done by Bowden, when he became the purchaser of the estate, was to pay off the incumbrance, in order to get the title deeds into his hands,

3. By Purchase for Pecuniary Consideration.

Where the pauper purchased a messuage for fifty two pounds under an agreement that forty pounds of the purchase-money should be secured by mortgage of the messuage to the vendor; and the pauper, after residing in it some years, sold the messuage for sixty pounds to another, who paid the forty pounds to the original vendor and received the deeds, and twenty pounds to the pauper, who quitted the messuage in less than forty days after the payment of the forty pounds to the original vendor: Held, that the pauper did not gain a settlement by residence on such estate.

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A mortgagee entering as a principal creditor for above thirty pounds, by residing, gains a settlement.

which had never passed from the original seller into the hands of the pauper. That was a payment therefore made by Bowden for his own benefit, and not on behalf of the pauper." Order quashed.

Rex v. Stockland, 2 *Stra.* 1162; *Burr. S. C.* 169; 2 *Bott*, 667. John Spiller, the pauper, was a mortgagee of a term for 15*l.*; and 30*s.* were due to him for interest, and 18*l.* 10*s.* more on bond and simple contract. The mortgagor died. Spiller took out administration as principal creditor; entered and was possessed: and so continued till removed by the original order. By the court: "Spiller gained a settlement as a purchaser for a consideration of more than 30*l.* *bonâ fide* paid."

3. *Money laid out on Estate after Purchase.*

Laying out money afterwards upon a purchase under thirty pounds will not gain a settlement, even though the money be laid out in the erection of a shop.

3. *Money laid out on Estate after Purchase.*

Rex v. Dunchurch, H. 6 *Geo. III.* *Burr. S. C.* 553; 1 *Bla. Rep.* 596. Edward Tansur, a certificate man from Dunchurch, with his wife, were joint purchasers of a house and garden at South Kilworth, and paid for it 19*l.* He laid out 15*l.* more in repairs, and built a shop on the premises; and was taxed after the rate of a tenement of 30*l.* value, and resided in the same till his death. After his death, his widow, the pauper, continued in possession for ten months; afterwards sold part for upwards of 30*l.* and reserved part to herself; but removing out of the same into another house in the same parish she was removed to Dunchurch. Order confirmed. By the court:—"The whole question is, whether this woman was a *bonâ fide* purchaser of an estate of 30*l.* value? She cannot be presumed to have come to it by descent, or executorship, or any such like act of law, because the contrary appears. She and her husband were joint purchasers. They took jointly and by entirety, and not by moieties. If so she can only stand in the same situation as her husband did; which is that of a purchaser. And as to the value the act takes it according to the purchase money actually paid; and no money afterwards laid out can make the prior purchase of a greater value than it really was at the time of making it. Therefore she gained no settlement by this purchase." Orders confirmed.

4. *Equitable Interest in Purchased Estate.*

A written agreement was made for the purchase of an estate, to be paid for by two instalments; the first to be payable within a few days after signing the agreement, and the last at the expiration of seven months. The vendor was to make out a good title on the payment of the last instalment, and to convey the premises: but the purchaser was to be let into possession upon the payment of the first instalment. The purchaser paid the first instalment, and was let into possession, and continued in possession for a year and a half;

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Rex v. Geddington, 2 *B. & C.* 29; 3 *D. & R.* 403; 2 *D. & R. Mag. Ca.* 101.(a) Order of removal of J. Garfield from Geddington to Dunton Bassett quashed. Case:—In November, 1814, Garfield entered into a written agreement with Richard Nason, by which the latter agreed to sell to Garfield a messuage situate at Dunton Bassett, for 310*l.* to be paid as follows: 160*l.* on the 30th of November instant, and 150*l.* on the 24th June next, with interest at 5 per cent. Nason agreed at his cost to make out a good title, and to convey the same at the cost of Garfield on the 24th June next, on payment of 150*l.* with interest. Garfield agreed with Nason to pay him on the 30th November the 160*l.* and the 150*l.* with interest on the 24th June, on having the premises conveyed to him. On payment of the 160*l.* Garfield was to be let into possession; but in case default should be made by him of payment of the 160*l.*, the agreement was to be void, and Nason was to be at liberty to sell the premises on the 5th December next. The 160*l.* was paid on the day appointed, and possession then given by Nason, and the pauper resided in the house for a year and a half; but he never paid the 150*l.*, nor was any conveyance ever executed. An action at law was brought by Nason for the 150*l.*; but afterwards, by agreement, discontinued; Nason paying the costs, and returning to the pauper 30*l.* of the 160*l.*, and the pauper agreeing to give up the contract and the possession, which was accordingly done. [In the course of the argument of counsel, *Holroyd, J.*, said, "If you show that the vendor and vendee stood merely in the relation of trustee and *cestui que trust*, then the latter would have an equitable estate, and would gain a settlement. But none of the cases cited show that a court of equity would, under the circumstances of this

(a) See observations on this case in a pamphlet by A. Amos, Esq.

case, consider the estate to belong to the vendee as he failed to pay the residue of the purchase-money. And *Bayley, J.* observed, "That *Rex v. Long Bennington* (a) seems to be precisely in point. There the pauper agreed by parol to buy a copyhold for 150*l.* He paid 34*l.* and entered into possession, in part performance of the contract, and continued near six months; the contract was then rescinded, because the seller would not give an indulgence he had promised for the residue of the purchase-money, and the seller returned the pauper 14*l.* The question was, whether this gave a settlement? The sessions thought it did; but this court held otherwise: for the pauper had purchased no estate or interest in this land; he could have made no claim in equity without paying the remainder of the purchase money; and though an equitable estate is sufficient to confer a settlement, a questionable right to go into a court of equity is not." After the argument was concluded, *Bayley, J.* "In cases relating to the law of settlement, the manner of determining any particular point is not so important, as it is that the decisions should be uniform and consistent. For as that law is administered gratuitously by a most respectable and meritorious body of magistrates, whose habits and duties are not likely to make them acquainted with the nice distinctions of the courts of equity, it is desirable that they should have cases settled upon plain grounds for their direction, rather than that they should be called upon to entertain and decide difficult questions of equitable law. The question in this case arises on the 9 Geo. I. c. 7, s. 5. There must either be an estate or interest purchased; and by the latter word I understand a definite interest, for which the party contracts at the time of making the contract. If the question raised were *res integra*, I should be disposed to hold that the legislature meant a legal interest only. It has been decided, however, that a *cestui que trust* has a sufficient interest in land to gain a settlement under this statute, and I feel bound to adhere to those decisions; but there may be a distinction between an equitable estate and a mere equitable right, and that is adverted to by my brother *Holroyd* in *Rex v. Toddington*. The *Rex v. Long Bennington* is expressly in point with the present, and shows that in cases of constructive trusts a settlement is not gained by the *cestui que trust*. The agreement there, indeed, was by parol, but that circumstance formed no ingredient in the judgment of the court. The principle of the decision was, that a court of law, perhaps in ignorance of what a court of equity would do under the circumstances, held that it was not the case of a mere naked trustee and a *cestui que trust*; for, until the payment of the full purchase money, the vendor had a beneficial interest, and was something more than a trustee; and therefore that no settlement was gained. There is one distinction between the two cases. In the case cited it does not appear when the residue of the purchase-money was to be paid: whereas in this case part was paid on the 30th November, and the residue was to have been paid on the 24th June. And it is said, that during the interval the pauper was irremovable; but I think he was not irremovable till the 24th June, because it was not his own estate, either at law or in equity, until he paid or tendered the residue of the purchase-money; and that being so, I am of opinion that there was no settlement gained in *Dunton Bassett*." *Holroyd, J.* "I am of opinion that this was not to be considered the estate of the pauper, either in law or equity, so as to give him a settlement under the contract which is stated in this case. Whether, if the vendee had paid, or offered to pay, the remainder of the purchase-money, an equitable estate would have been gained, so as to give a settlement, is a very different question. The cases which have been cited show, that where the vendee has performed the contract in part, and has offered to pay the remainder of the purchase-money, the vendor then becomes a trustee for the vendee, and a court of equity will compel a specific performance. *Rex v. Long Bennington* seems to me to have been properly decided, and to govern the present. There, indeed, the contract was by parol, and it did not appear that the vendee was to have possession for a specific

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but the last instalment was never paid, nor any conveyance executed; and the purchaser afterwards gave up the contract upon receiving back part of the first instalment: Held, that under this contract the purchaser did not acquire an equitable estate, so as to gain a settlement under the 9 Geo. 1, c. 7, s. 5.

(a) *Trin.* 57 Geo. III. The learned judge read this case from a manuscript note. S. C. 6 M. & Sel. 403.

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period of time; but these distinctions were not relied upon. Here time is given till June, when the residue of the purchase-money is to be paid; and it is agreed that the vendee should have possession till that time. The effect of which is merely this, that it might or might not amount to a demise for that time; but there is not sufficient found in the case to show that there was a renting of a tenement of 10*l.* annual value. But it is said, that at all events there was a purchase of an interest for six months; it does not, however, appear how much was to be paid for that, or that the pauper, in purchasing that, acquired an interest in land to the value of 30*l.* If the contract was rescinded by the fault of the vendor, it is questionable whether any thing could be recovered for the possession during the six months. For these reasons I think that no settlement was gained in *Dunton Bassett*." *Best, J.* "It has long been settled that an equitable estate will satisfy the words, *any estate or interest*, in the 9 Geo. I.; but it must be a clear and absolute equitable estate; such an estate as a court of equity would put the person claiming it into the complete possession of, and protect him against any attempts to disturb his enjoyment of it. A court of equity could not give possession to a purchaser who had not paid the purchase-money, or keep him in possession if he were put in against the legal claim of the vendor. Such a purchaser has only an inchoate right, which is not rendered a perfect equitable estate until he has paid all that he has stipulated to pay. Where purchasers have been ready to pay the price, and tendered it to the vendor, cases have occurred in which very nice questions have arisen, whether they are entitled to a conveyance. The business in which we are occupied in this court does not qualify us for the decision of such points. But if we are incompetent, how much more so must those be who compose the courts of sessions; and these things cannot be submitted to us until they have first been decided upon by them. I say, therefore, with my brother *Bayley*, in *Rex v. Horndon-on-the Hill*, (*ante*, 724,) 'we cannot know how a court of equity will deal with such a case;' and that I do not see that the pauper had any equitable estate, certainly not such a perfect one as confers a settlement." Order confirmed.

Payment of a deposit does not give an equitable estate.

An equitable estate is necessary to give a settlement. An equitable right is not sufficient.

Rex v. Woolpit, 4 D. & R. 456; 2 D. & R. Mag. Ca. 272. John Pennell was removed from Woolpit to Coombs. Order quashed. That part of the case on which judgment was given stated that the pauper, by a written contract, agreed to buy some cottages for 70*l.*, and paid 10*l.* of it "at the time." He never paid any more, nor was any conveyance executed. He built on the garden, but never lived on the premises. *Bayley, J.* "After *Rex v. Geddington*, (*ante*, 732,) which was founded upon *Rex v. Long Bennington*, it is quite idle to contend that the mere payment of a deposit upon the purchase of an estate of this description is sufficient to create such an equitable estate as will confer a settlement or render the party irremovable. Those cases have decided that an equitable right is not sufficient to confer a settlement, or make the pauper irremovable. There must be an equitable estate actually vested to produce these consequences. It is impossible to say that this pauper ever had an equitable estate. He had an equitable right; that is to say he had a right, upon the payment of the remainder of the purchase-money, to go into a court of equity, and call upon the vendor for a conveyance. He had an inchoate equitable right, but clearly had not an equitable estate. It never could be predicated of him that he had a right to go into a court of equity and demand a conveyance of the estate at all events, and say that he was seised in his demesne as of fee, in equity. *Holroyd, J.* "I am also of opinion that, so far from the pauper having an equitable estate, he had not even a right to go into a court of equity until he had tendered or signified his consent to pay the remainder of the purchase-money; and if it was refused on the other side, and he had filed a bill in equity, notwithstanding the refusal, the bill, I should presume, would be dismissed with costs. He had no right to go into equity unless he had done, or offered to do, all that was necessary on his part to perfect his title." *Littledale, J.* "He had no right to go into equity unless he did something else which he had not done." Order of sessions quashed.

A father, upon

Rex v. Standon, 2 M. & Sel. 461. Removal from Eccleshall to Standon

confirmed. Case:—Ann is the widow of Joseph Farmer, deceased. Five years ago Joseph, their eldest son, agreed to give 65*l.* for a piece of land in Eccleshall, which was offered to sale by the commissioners under an inclosure act; but not having sufficient money himself he applied to his father, who consented to advance him 20*l.*, (which had been left to his wife, Ann,) upon the following conditions:—viz., that a house should be built by the son upon the land, which the father and mother were to have for their lives, and the life of the survivor, after whose death the same was to go to the son; but it was also agreed that the father and mother were not to sell or dispose of the place, nor to take any other family into the house. The father was at that time advanced in years, and the son wished to show his good will towards him and his mother, and to assist them all he could. This agreement was not reduced into writing, but the father having advanced the 20*l.* to the son, the whole 65*l.* were then paid by the son for the purchase, and the land was conveyed by the award of the commissioners to the son in fee. The house was built immediately afterwards at the son's expense, but the father assisted personally in building it. When finished, the father and mother took possession of it with the consent of the son, who did not think himself at liberty to turn them out, nor did he ever attempt to do so. The son lived in another house, and his father and mother paid no rent to any person, and after having resided in the house about three years, the father died, and the mother continued to live in it as before, with the son's consent, until her removal under the order to Standon. Lord *Ellenborough*, C. J. "It appears clearly that no estate, either legal or equitable, was conveyed to the father or mother, nor any such interest probably as a court of equity would have decreed to be conveyed. They had nothing more than a conditional and qualified license by parol to occupy, irrevocable perhaps, except on breach of the condition not to let in any other person. This is not like the case of a devise; here is no gift or grant of an interest in the land; and the parties seem to have been aware of that, for they stood by and suffered the whole to be conveyed to the son, resting merely on his parol license that they should live there." *Le Banc*, J. "The ground on which this case is rested is, that a party cannot be removed from his own estate. The cases decide that if a party has clearly an equitable estate, he shall not be removed from it. But the court must see clearly that he has an equitable estate, which would be perfected in him by the intervention of a court of equity. I think the argument here has failed in showing that these parties could, by resorting to a court of equity, have obtained a conveyance of the legal estate."

Rex v. Lopen, 2 T. R. 577. A woman, on her marriage with a copyholder of a manor where the widows were entitled to free bench, gave a bond that the son of her intended husband, by a former wife, should have possession of part of the copyhold after her husband's death, on condition of his repairing the whole. At the husband's death the son took possession. It was urged that as the bond was without consideration, a court of equity would not compel performance. *Buller*, J. "It was not a voluntary bond, for it was executed in consideration of marriage, and the widow reserved in it a benefit to herself. But this is an instrument obligatory at law. There is another circumstance decisive in this case; the widow was so satisfied that she was bound by the bond, that on the death of her husband she actually delivered up possession according to the contract; and from that time till 1768 the pauper's father (who was the son mentioned in the bond) continued in possession under an idea that he was entitled under the bond. This man then, so in possession, had a good title against all the world but the widow; nay, the widow herself was so far bound by the bond, that she could not have recovered in ejectment. So that he not only had an equitable title, but he had also the possession, and no person could have recovered the estate from him."

Rex v. Llantilio Grossenney, 5 B. & C. 461; 8 D. & R. 320; 4 D. & R. Mag. Ca. 73. Order of removal of William Edwards, &c. from St. Peter's, Hereford, to Llantilio Grossenney, confirmed. Case:—In 1816 the pauper made a parol agreement with Ann Carter for the purchase of a cottage and

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parol agreement, advanced money to his son, on condition of his purchasing a piece of land and building a house thereon, which the father and mother were to occupy during their joint and separate lives, but not to dispose of the same; the father, after living in the house three years rent free, died: Held, that he had no legal or equitable estate in the house, and that the occupation conferred no settlement; nor was the mother entitled to reside in it irremovably.

An equitable estate may be acquired by a bond from the legal owner.

Where a pauper contracted by parol for the purchase of a cottage and garden at the

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price of 40*l.*, and having paid 30*l.* on account, was let into possession without a conveyance; and after remaining in possession for twelve months, resold the premises for the like sum of 40*l.*, and having given up possession, paid the original vendor the 10*l.* owing upon the purchase: Held, that the pauper did not gain a settlement by the purchase of an estate or interest under 9 Geo. 1, c. 7, s. 5.

Payment of purchase-money has no retrospective effect.

garden for 40*l.* Under this contract he took possession, and paid Carter 30*l.* on account. No conveyance was executed. After the pauper had for twelve months lived in the cottage with his family, he sold the property for 40*l.* to Sarah Watkins, to whom he gave possession, and afterwards paid the remaining 10*l.* to Carter. The pauper was never in possession of the premises after he had paid the whole of the purchase money. *Bayley, J.* "It is very desirable to adhere to the language of the statute, and to the construction put upon it by decided cases. There must be a purchase of an estate or interest; and by the latter word must be understood some specific definite interest, and the party contracting must become the purchaser. *Rex v. Long Bennington*, and *Rex v. Geddington* (*ante*, 732) establish that although an equitable estate is sufficient to give a settlement, still the purchase must be completed; and that if it be not an estate, but an equitable right only, no settlement is gained. The principle deducible from these cases is, that the relation of trustee and *cestui que trust* must be created in order to give a settlement by the purchase. In *Rex v. Geddington* the agreement was to purchase an estate for 310*l.* of which 160*l.* was to be paid on the 30th November, and 150*l.* on the 24th June then next. The latter sum was never paid. The pauper resided a year and a half, and afterwards the contract was rescinded; there by paying 150*l.* a perfect equitable estate would have been acquired; but it was never paid; therefore the pauper was held never to have had a perfect equitable estate. Here the pauper had paid 30*l.*, and by paying 10*l.* more he would have performed all he was bound to do, and would have acquired a perfect equitable estate. During the whole time the pauper was in possession, he might have been removed. He never was the purchaser of an estate or definite interest. It has been argued that the payment of the 10*l.* would have given the purchaser a right to demand a conveyance; and that as it might have been made at any time, the payment, when made, related back to the time when the occupation began, and therefore that the estate by relation was the estate of the purchaser from the time his occupation commenced. I think, however, for the purpose of a settlement, such a payment did not give him the estate *ab initio*, but only from the time the payment was actually made; the expression of my brother *Holroyd* in *Rex v. Geddington* as to the vendee having acquired a settlement by having paid or offered to pay the remainder of the purchase-money must be understood in that sense." *Holroyd, J.* "The pauper in this case never was in possession of the estate after he had paid the 10*l.* He therefore never came to settle upon his own estate. A tender of the purchase-money might perhaps have been equivalent to payment, upon the principle that an offer to perform is equivalent to actual performance; but then in that case, in order to give a settlement, the purchaser, at the time of the tender, must have had a right to continue to hold the premises. Here at the time when the payment of the residue was made, the purchaser had no right to hold possession of the premises." Order confirmed.

4. *Of the Residence.*

IV. OF THE RESIDENCE.

No one can be adversely removed from the parish in which his freehold is situated; and if he quit it *voluntarily*, and become indigent, he cannot be removed *thither* unless he has gained a settlement. It is therefore essential to the perfecting of a settlement in respect of *estate*, that the owner should have *actually resided* in the parish where it is situated for full *forty days*, and whilst his interest continued. After he has so resided for that time he has acquired a perfect settlement, and cannot be removed.

Settlement lost by non-residence within ten miles.

The pauper however will not now retain a settlement acquired by estate for any longer time than he inhabits within ten miles thereof. See 4 & 5 Will. IV. c. 76, s. 68.

Residence in the parish sufficient.

Ryslip v. Harrow, 2 *Salk.* 524; 2 *Bott*, 673. By *Holt, C. J.* "Having land in a parish will not make a settlement, but living in a parish where one has land will gain a settlement without notice; for the act never meant to banish men from the enjoyment of their own lands."

Berkhamstead v. St. Mary, North Church, 2 Sess. Ca. 182; 2 Bott, 51. J. Woodward, the husband, ran away, and it was not known whether he was alive or dead. In the mean time the wife had two houses devised to her in North Church, and she and her children went to live in one of them. The question was, whether by continuing therein forty days they gained a settlement. Lord Hardwicke, C. J. "As this case is stated, the mother cannot gain a settlement for her children: the father, whilst alive, is the head of the family, and the children must derive their settlements through him. As to the cases of *foreigners* or *Scotchmen* who have no settlements, they are singular cases, and the wife gains a settlement through necessity: but there never was an instance where the wife was held to acquire a settlement during the life of her husband. The husband, in right of his wife, has a title to live at N. C., but he can gain no settlement there without a residence for forty days. There must be in all cases an inhabitancy; the wife's inhabitancy at N. C. with her children is not the inhabitancy of her husband. A *feme covert* cannot by residence gain a settlement for her husband; the only doubt is, whether, as he is stated only to have been a clerk, we are bound to look on his appointment as for life." Page and Probyn, Js. agreed. Lee, J. seemed to think that the mother could gain a *right of residence* for her children at N. C., but he admitted that she could not gain a *settlement* for them during the father's life.

4. Of the Residence.

Residence by the wife, where husband is absent, on an estate devised to wife, is not sufficient.

Rex v. West Shefford, Burr. S. C. 307; 2 Bott, 677. John Bird came into West Shefford with a certificate from Baydon. During his stay at West Shefford he became beneficially entitled to a leasehold estate of 14l. a year there, determinable upon his own life; upon which he entered on November 17th, and continued in possession till the 15th of December following, being twenty-eight days only, when he died. By the court: "In all cases, whether of ownership of land or renting 10l. a year, a residence of forty days is necessary. And *Mursley v. Grandborough* (*ante*, 705) was cited as in point, in which it was holden that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by descent, marriage, executorship, or administration,) may dwell upon it as his own, and he is not removable, and will gain a settlement if he continue forty days, though under 10l. a year. But he must abide forty days. And neither he nor his can be removed to it from any other place, unless he shall have resided forty days.

Residence for less than forty days is insufficient.

Rex v. Sowton, Andr. 345. T. Willes, the pauper, rented an estate in Sowton at 100l. per annum, and being distrained, left the estate, and having an estate in his own right for a term of years of the value of 19l. 10s. per annum in Sidbury, went there and took possession of the estate. He continued at Sidbury from November to April, weeding the ground and sowing turnips therein, but paid no taxes and had no stock on the lands, nor any goods in his house at Sidbury, but lodged at a public house there, without having a particular room assigned to him. He continued there forty days in the whole, but not successively, and went frequently to Sowton to see his wife and children, who were left behind, and remained at Sowton, where he stayed sometimes a week at a time. Afterwards, in April, he sold his estate, and went back to Sowton, from whence he was removed. Lee, C. J. "The pauper had certainly no settlement at Sowton if he obtained one at Sidbury, which is the point in question. And to determine this, it is proper to be considered whether it appears he had such an interest in the estate as was properly his own, and contra-distinguished to a rack-rented estate. The case is not stated so fully as it should have been; for it should have been shown by what title the pauper came by the estate, whether by act of law as an executor, or by devise or purchase, or in what other manner. As this is not done, we cannot intend that he was a purchaser thereof, and consequently this case does not fall within the late act. However, upon the circumstances set out in the sessions order, the estate does seem to be of a beneficial nature, and the pauper is mentioned to have had it in his own right, and consequently the *quantum* of the value is not material, because the owner has a right to be where his estate lies, and so it has been determined. The next matter to be considered is the pauper's residence at Sidbury. It is rightly admitted at the

Residence for forty days in the parish wherein a man has an estate of his own (*except it be by purchase under 30l.*) is sufficient to gain a settlement, though it be not on the estate or successive. It gains a settlement also for his children, they not having gained a settlement of their own, but remaining part of his family, though living elsewhere.

4. *Of the Residence.*

bar, that it is not necessary, upon the statute of Car. II., the continuance should be for forty days successively. In *Edgeware v. Harrow* it was held, that a residence for forty days, where the party is irremovable for that time, gains a settlement. And upon the old law, when a man came to a place, on the first day he was regarded as a stranger; on the second as a guest; and on the third as an inhabitant: and a place of settlement (which is a modern term, and has arisen from the acts of removal,) is a place of habitation. Now in this case it is plain, from what is said under the former head, that the pauper was irremovable whilst he was at Sidbury; and though he lodged at a public-house, this is not very material, because a man may have 100*l.* a year in a parish, and no house there. And the reason of his going to Sowton and other places is mentioned to be for the purpose of seeing his family, and about his affairs. Objected: That the party's settlement at Sowton was not determined, because it does not appear he was absent from thence for forty successive days. Answer: This point depends on the question whether he was long enough at Sidbury to gain one there; for if so, then he loses his former settlement at the other place. Upon the whole therefore we must take the estate to be a beneficial interest, and the property of the pauper. And his residence at Sidbury was such as is sufficient to gain him a settlement there. As to the other point, there has been some diversity of opinion amongst the judges, how far the settlement of children shall be derived from that of the father. In *Edgeware v. Harrow* it was said by Parker, C. J. 'That a child cannot be sent to the place of the father's settlement unless the child hath been there; for that he derives a settlement from his father, not as he doth an inheritance, but by reason of his being in a place from whence he could not be removed whilst he was with his father. But in *Eversley v. Blackwater*, where that objection was taken by Mr. Reeve, the court held that a child may be sent to the place of his father's settlement though he hath never been there, which was that case, but the child was only two years old. In *East Goodaway v. West Goodaway*, where the child was of a considerable age, and parted from his father, it was held that he could not be sent to the place of his father's settlement; and so it was resolved in *St. Michael's, Norwich, v. St. Matthew's, Ipswich*, where the child had been twelve years parted from his father, and emancipated from him, and also married. This therefore is the true distinction, that where a child remains in his father's house, and has gained no settlement of his own, his settlement shall attend that of his father; but otherwise it is where he has been separated from his father and has gained a settlement of his own. The consequence is, that as in this case the children have always continued in the father's family, and it is not stated that they have gained a settlement of their own, though some of them are twenty or thirty years old, they are settled where the father is. And the law is the same in the case of a mother as of a father." The rest of the court was of the same opinion with the chief justice upon both points, and for the same reasons, and therefore the order of justices was now confirmed, and the order of sessions quashed.

Same point.

Rex v. St. Nyott's, Burr. S. C. 132; 2 Bott, 676. Nicholas Penquite, the pauper, was born at St. Cleere; afterwards he gained a settlement at St. Nyott's; and from thence returned to St. Cleere, and lived there with his mother on a tenement, in part of which he had an estate of freehold and inheritance, and of which he was seised in common together with his mother and sisters. He worked there as a day labourer, and lodged sometimes on his own estate and sometimes in other places, where he worked in St. Cleere, and at other times in other parishes adjoining; but did not reside on his estate in St. Cleere, or in St. Cleere, forty days together at any one time between his return to and selling his estate in St. Cleere (about three years). By the court: "This depends on the 13 & 14 Car. II. which directs the sending a pauper to the place where he was last legally settled for the space of forty days. But this man continued off and on for more than forty days. And it is not necessary that he should have resided there forty days together. He was irremovable from St. Cleere for above forty days; and that is sufficient."

IX. Of Settlements by Office. (a)

1. Statutes on the Subject.

No settlement can now be acquired by serving an office. Before however the 4 & 5 Wil. IV. c. 76, it was observed by Lord *Ellenborough*, that a man who is of sufficient repute and station among his neighbours to be appointed to a public annual office, and who discharges the duties of such office for that period, seems peculiarly entitled to the privilege of a settlement in the parish where he has been thus known and employed. The law therefore which is to this effect, carries with it an obvious propriety, not so easily to be discerned in some of the other species of settlement. *Rex v. Mersham*, post, 747.

Though the service of an office may not gain a settlement, because it is not a public annual office, yet it may as an hiring and service.

1. Statutes on the Subject.
2. What Office, and what placing therein, will gain a Settlement.
3. Of the Time of Serving.
4. Of the Residence.

1. STATUTES ON THE SUBJECT.

1. Statutes on the Subject.

The 3 & 4 W. & M. c. 11, s. 6, (b) enacts, "That if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any public annual office or charge in the said town or parish, during one whole year, or shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required."

And the 9 & 10 Will. III. c. 11, enacts, "That no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

From and after the passing of the 4 & 5 Will. IV. c. 76, (Aug. 14, 1834,) no settlement shall be acquired by serving an office.

2. WHAT OFFICE, AND WHAT PLACING THEREIN, WILL GAIN A SETTLEMENT.

2. What Office, and what placing therein, will gain a Settlement.

The nature of the office is defined by the enactment itself;—it must be an annual office or charge, and public in its nature, and the party must have been legally placed in such office. The act also requires that the person shall execute it for himself and on his own account, to entitle him to a settlement thereby; it follows that one who fills the office for another person, or a deputy, gains no settlement.

A person sworn into and serving the office of constable, as deputy to another, does not thereby gain a settlement. (19 Vin. Abr. 379.)

Rex v. Winterbourn, Burr. S. C. 520; 1 Bla. Rep. 452. (c) The custom was for the constable to be presented by the jury at the leet. The jury presented R. Bayly, Esq., who procured the pauper to serve for him, in order

Deputy constable gains no settlement.

(a) See general division of the subject, ante, 269.

(b) This statute was evidently intended to be confined to inferior annual officers, such as constables and the like known to the parish, and though the construction of the act has been extended in some cases, it ought not to be carried further, per Lord Kenyon in *Rex v. Wan-*

tage, 2 East, 65; and per Taunton, J. in *Rex v. Stogursey*, 1 B. & Adol. 798, post, 740.

(c) Mr. Nolan cites this case as an authority for saying that under 3 & 4 W. & M. a person must be appointed to the office; but the case as reported in *Blackstone* corresponds with the text.

2. *What Office will gain a Settlement.*

Same point.

A constable residing under a certificate was sworn into his office, and executed it by deputy: He gains a settlement under 9 & 10 W. & M.

Secus under 3 & 4 W. & M.

Parish clerk is an annual office. See however *Rex v. Stogursey, infra.*

The pauper must have been legally placed in an annual office. A person performing the duties of a parish clerk without any appointment, legal or *de facto*, and without any appointment being signified to the parishioners, does not acquire a legal settlement in the parish, although he resides therein upwards of forty days, and performs the duties for 12 years, during which he receives an annual salary.

to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court leet as constable in his own right. The court were clear that this was not serving an office on his own account, within the intent of the statute.

Rex v. Allcannings, Burr. S. C. 634; 2 Bott, 242. The house occupied by Mr. Amor, being in turn to furnish a tithingman for Patney, the leet jury presented him to that office. And he, by leave of the court leet, put in his place Thomas Palmer, a common labourer and housekeeper, living in the parish, who was sworn in at the leet, and served the office for a year; Amor paid him all expenses attending the execution of it. Lord Mansfield: "The question is, whether the pauper served the office *on his own account* or not? The question is not how he was *presented* to it, but how he *served* it;" and after stating the facts, said, "It is clear that he executed the office for Amor, and not for himself." The rest of the court concurred, and Yates, J., said, "In the case of *Winterbourn (ante, 739)*, the pauper was considered as a substitute."

Rex v. Hope Mansell, E., 23 Geo. III., Cald. 252. James Davies, &c., was removed from Hope Mansell to Brampton Abbots. Order quashed. Case:—D. Davies, being a *certificate* person from Ross to Brampton, resided at Brampton, where his son the pauper was born: the son lived in the parish, was chosen constable, and sworn to execute the office. After being so sworn, he declared he would not serve himself, and employed and paid another to serve for him; and the court were of opinion that the pauper having been sworn into office, and executing it by deputy, discharged the certificate and acquired a settlement.

In *Rex v. St. Maurice, Winchester, Burr. S. C. 34, Lee, J.*, in alluding to *Rex v. Burclean*, said, "In that case the court unanimously held, that this act (9 & 10 W. III.) was not to be considered as an explanatory, but a *new* act;" and he added, "And that is true; for it enlarges the certificate man's power of gaining a settlement: for now, if he executes such an office by deputy, he gains a settlement; whereas by 3 & 4 W. & M. he was to execute it for himself, and on his own account."

Gatton v. Milwich, Set. & Rem. 241; 2 Salk. 536; Fol. 123; 2 Bott, 157. A person being chosen *parish clerk* by a parson, served for several years, and received his fees and dues. By the court: "It is a parish office, and has the care and custody of the ornaments of the church. 'Tis more than an annual office, for he is not movable and has fees: he is by common law an officer, and in for life. 'Tis true, if he is poor and has a family, they may remove him: for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish."

Rex v. Stogursey, 1 B. & Ad. 795. Joel Leversham was removed from Stogursey, in the county of Somerset, to Kilton. Order quashed. Case:—The office of parish clerk of Kilton being vacant in October, 1818, the pauper began then to perform the duties of that office, and continued to perform them until his removal in January, 1830, and until the order appealed against, and received a yearly salary of 2*l.* 13*s.* from the parish; but neither he nor any other person was, during that period, chosen to the said office by the vicar, in whom the appointment is vested, nor was any such choice signified to the parishioners according to the canon. The pauper, when he first served the office, was resident in the parish of Kilve. On the 2nd of February, 1819, he took a lodging in the parish of Kilton, and resided there until the 25th of March following, when he went to the parish of Stogursey, where he has since continually resided. The question for the opinion of the court is, whether the pauper gained a settlement in the parish of Kilton. Lord Tenterden, C. J. "I think the order of sessions must be quashed, on the ground that there was no execution of an office. In my own opinion, there is great doubt whether this be an annual office within 3 & 4 W. & M. c. 11, s. 6. It is not so, strictly speaking, for it is more, it is an office for life. *Gatton v. Milwich (2 Salk. 536, supra)*, can hardly be said to

have been decided on the ground that the office was annual. *Powell, J.* there says, 'It is more than an annual office, for he is not removable, and has fees.' And in *Helsington v. Over* (*Burr. S. C.* 746, *post*, 746) *Aston, J.*, (a judge very well acquainted with the poor law) after observing that the employment of officiating curate under a sequestration cannot be called an annual office, when the sequestration may be determined at any time, adds, 'It is not the annual office of a constable or a tithing-man, they are appointed yearly, and to serve for the year. That of parish clerk is a freehold, and it is upon that footing that a parish clerk gains a settlement.' I doubt therefore whether this be a public annual office within the statute. But assuming that an office for more than a year might be so considered, it appears to me that in this case the pauper cannot be said to have executed the office. There is indeed a difference between the statutes 3 & 4 W. & M. c. 11, and 9 & 10 W. III. c. 11. Under the last, it is necessary that the party, to gain a settlement by serving an office, should have been legally placed in it; under the former, if the office has actually been executed, it is not necessary to enquire whether the placing was legal. But here the party was never in any way placed in the office. The case merely states that he performed the duties from a certain time. The only proper appointment would have been by the vicar. If however he had been elected by the parishioners, and the vicar had afterwards assented, it might perhaps have been said that the service under such election was a good execution of the office. But here was not even a colourable appointment. The pauper only did the duties which a legal parish clerk, when appointed, would have done." *Littledale, J.* "It is not necessary to decide now whether or not the office of parish clerk be a public annual office within the statute, though I am rather inclined to think it is. But here the office was not executed. It is true the pauper served twelve years; but whether it were twelve or one makes no difference. The case merely states that the office of parish clerk being vacant in October, 1818, the pauper began then to perform the duties and continued doing so down to the time of his removal. It shows no appointment either by any person entitled by custom or otherwise. If there had even been such an appointment, as though not legal in the first instance, might ultimately have been rendered so, perhaps a settlement might have been gained. But here was no appointment whatever, and consequently no execution of the office." *Taunton, J.* "Whether this be an annual office or not it is unnecessary to decide; and perhaps the necessity may never arise, because a parish clerk duly appointed has at any rate a settlement by freehold. It is not pretended in this case that the pauper was legally placed in the office within the terms of 9 & 10 Wil. III. c. 11, and it appears to me that he never was placed in it at all. He appears by the statement to have put himself into the office, and there done what would have been performed by a parish clerk if one had been legally appointed, but he himself never was appointed, elected, or nominated; he merely did the duties and received the salary. I think this was not an execution of the office within the meaning of 3 & 4 W. & M. c. 11, and that no settlement was gained." Order of sessions quashed. (a)

Rex v. Yalding, 3 D. & R. 352; 2 D. & R. Mag. Ca. 39. Order of removal of John Russell from Yalding to Marden quashed. Case:—The manor of Aylesford is a manor of the ancient demesne of the crown, the court-rolls of which have been regularly kept for a long series of years, and the borough of Rugmorhill is a district within the manor, extending into seven parishes, and some part of it lying within the parish of Yalding. At a court-leet holden for the manor, it has been usual, from time immemorial, to appoint constables and borsholders, such officers being always expressed

Where the court-leet of the manor of A. appointed a person to be street-driver of the borough of R., a district within the manor, extending into seven parishes, and it

(a) In *Rex v. St. Mary, Berkhamstead*, 2 Sess. Ca. 182, the court seemed to be of opinion, that the executing the office of parish clerk is sufficient for a certificate person to gain a settlement; for it is an annual office and more.

In *Peak v. Bourne*, 2 Stra, 942, the plaintiff declared in prohibition; for that he was sued for serving the office of deputy parish clerk, without the license of the ordinary; and the court held, that a license was not necessary.

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appearing, first, that it was not an annual office; second, that he took no oath of office; and third, that he had not served under the appointment for one whole year: Held, that he had not such a public annual office or charge as would gain him a settlement under 3 W. & M. c. 11, s. 6.

to be appointed to serve "for the year ensuing," and sworn to discharge the duties. A custom of appointing an ale-conner at the court-leet has also existed in the manor from time immemorial, but it does not appear that that officer was ever sworn to execute his office. Since 1793 the office of weigher of weights and measures has been added to that of ale-conner. These latter, as well as the street-driver, have been appointed from time to time at the same court-leet as the constables and borsholders, although not expressed to be "for the year ensuing." At a court-leet holden in 1750 a street-driver of the borough of Rugmorhill was appointed for the first time. Similar appointments took place in 1753, 1764, 1772, and 1784, and from that time to the present thirty-eight courts-leet have been held, at each of which a street-driver has been appointed, with the exception of 1798, no court having been held in that year. But in 1799 two courts-leet were held, one in January and one in November, at which the appointments were in the same form as in other instances, so that such officer, together with the constables, borsholders, &c., has been appointed on the days of holding the court-leet, which have occurred at intervals, sometimes of more, and sometimes of less, than a year; but it does not appear that he was ever sworn to discharge the duties of his office, or that there is any oath applicable to the office. In the record of the proceedings of a court-leet holden for the manor of Aylesford on the 19th of January, 1813, is the following entry:—"Also they present and appoint John Russell to be street-driver of and within the borough of Rugmorhill, within the manor." On the 8th of January, 1814, the pauper was again appointed in a similar form, and a third time on the 20th of February, 1815. The pauper never appeared at the courts at which he was nominated, and was never sworn. He discharged the duties of the office in person from the 19th of January, 1813, up to his re-appointment on the 8th of January, 1814; he also served in person for a short period after his re-appointment in 1814, but another person, to whom he paid no compensation, served at his request in his stead during the remainder of 1814, and after his appointment in 1815; including, however, his services under the first and second appointments, he served the office in person for more than a whole year. During 1813, 1814, and 1815, he resided in the respondent parish, but not in that part of it which is situate within the borough of Rugmorhill, where his duties were to be executed. He was not residing under a certificate. It was urged that *St. Thomas, Winchester, v. St. Mary, Winchester*, was decisive to show that the service was sufficient, though it did not extend through the whole parish. [*Bayley, J.* "There the pauper executed the office throughout the whole of the parish in which he resided, and therefore it was fairly to be presumed that it was notorious to every inhabitant of the parish, that he did in fact hold the office."] It was urged that the duties of the office need not extend over the whole of the parish in which the pauper resides. [*Bayley, J.* "Is there any case in which it has been held, that the serving an office in one part of the parish, and residence in another, affords sufficient notoriety, and is a sufficient service to confer a settlement?"] It was also urged that residence in any part of the parish is sufficient. *Bayley, J.* "That will hardly be enough to support this settlement; but independently of that point, can this situation be called an 'office' within the meaning of the statute? It is unnecessary to go more at large into the objections raised upon the face of this case, because it is perfectly clear that the office held by this pauper is not a public annual office or charge within the meaning of this statute. This person was appointed at one court-leet to serve till the next; the interval between the two courts did not amount to a year, and the courts were held at various intervals *ad libitum*. Therefore he was neither appointed for a year, nor did he serve a year; the office was neither in its nature annual, nor was the appointment to it annual; and one or the other of those characteristics is absolutely necessary. I entertain very considerable doubt whether his residence was such as to afford due notoriety of his being the person who held the office, and also whether, not being sworn, he was legally invested with the office; but it is not necessary to decide those points, because the

settlement is evidently insufficient upon the ground already noticed. This is not a public annual office in its nature, and the pauper was not appointed to it for a year; and therefore it is not such an office as is necessary to confer a settlement." *Best, J.* "Upon the point last alluded to by my brother *Bayley*, it is quite clear that no settlement has been gained in this case. There must be either an appointment to an office to serve for a year, or an appointment to an office which by its nature is annual; and here there is neither the one nor the other. I am also inclined to think that the pauper's residence was insufficient. The principle upon which the courts have been accustomed to decide what is or is not good residence, is, that there shall be such a residence as necessarily renders it notorious to all the parish that the officer is within it. Now here there is no such notoriety, nor from the very nature of the residence can be. This case also comes within the very distinction laid down by Lord *Kenyon* in the case of *Rex v. Whittlesea* (post, 475), namely, that an appointment by the parish at large is good, but that by individuals is not; because this pauper was clearly appointed by a portion of the parishioners only." Order quashed.

Rex v. Clixby, 1 *Nev. & M.* 118; 4 *Bar. & Ad.* 153. Appeal against an order whereby W. Clayton and family were removed from Caistor to Clixby. Order confirmed. Case:—Clixby belongs, with the exception of about twenty acres of land, to one proprietor, Mr. Harman. There are nine occupiers of land in Clixby, including Harman, who retains some portion of his estate in his own hands; he holds no courts. The pauper (the only witness examined) stated that he had known the place thirty-three years, and had never known or heard of any pinder there before 1825. In 1825 Harman and two other occupiers of land in Clixby, of whom Mr. Lawrence, constable of Clixby, was one, ordered the pauper to go and be sworn in pinder. It did not appear in evidence that there was any public meeting of the parish, or any other meeting, to appoint him. The pauper went with Lawrence to a justice of peace, and was sworn in. He impounded cattle in Clixby in that year, and continued to do so for several years, till he was removed. In 1826 he was again sworn in before two justices of the peace. During all this time he resided in Clixby. The sessions found that this was a public annual office. The question for the opinion of the court was, whether by such service and swearing in the pauper gained a settlement in Clixby. *Denman, C. J.* "The court of quarter sessions have found this to be a public annual office, subject to the opinion of this court on the evidence. We think their finding is not warranted by the facts which they have stated. The office of pinder in this parish is not proved to be ancient, for it is not known that there was any such officer before 1825. Nor was the pauper appointed by any authority known to the law. The hog ringer is an annual officer of great public utility, appointed at the court leet. It is not necessary to decide generally whether a pinder properly appointed be a public annual officer within the act; it is sufficient to say, that under the circumstances of this case the office was not in this parish a public annual office." *Parke, Taunton, and Patteson, Js.* concurred. Order of sessions quashed.

Rex v. Hambledon, 4 *B. & C.* 459; 6 *D. & R.* 554; 3 *D. & R. Mag. Ca.* 215. Order of removal of Birdseye from Witney to Hambledon confirmed. Case:—In 1786 the parishes of Brumley, Chiddingfold, Dunsfold, and Hambledon, were incorporated under the 22 *Geo. III. c. 83.* The parishes of Haslemere, Shalford, Saint Martha, Hascomb, and Elstead, afterwards took the benefit of the same provisions; and all the parishes before mentioned became incorporated parishes for the purposes of that statute. About 1787, a very large house of industry was erected by contribution of all those parishes upon the waste of the manor in Hambledon, as the most convenient situation for the purposes of the incorporation. To this house paupers from all the united parishes were sent, and were maintained separately at the expense of the parishes to which the paupers belonged. For the management of this house, and the employment of all classes of paupers therein, a governor was from time to time appointed, under the powers of the statute. In 1820 the pauper was appointed governor of the house of indus-

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Where the pauper was in 1825 sworn in as pinder before two justices, (being ordered to be sworn by a few occupiers only, and not at a public meeting,) and served as such for several years, the office being unknown in the parish previously: Held, that he gained no settlement.

Governor of a workhouse is not an officer. Appointment to be governor for a particular parish, in a workhouse belonging to an incorporated district, is bad.

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try by this order. Form:—"Surrey sessions. We, two of his Majesty's justices of the peace for the county of Surrey, acting for the hundred of Godalmin, in the said county, do hereby appoint John Birdseye, of Hambleton, to execute the office of governor of the poor *for the parish of Hambleton*, within the said hundred, for one year, to be computed from the week of Easter now last past, to which he has been recommended at a public meeting, holden the 29th day of March last, pursuant to the directions of the statute passed in the 22 Geo. III. for the better relief and employment of the poor. Given under our hands and seals this 6th day of April, 1822. G. W., O. J. M." Under this appointment he served the office of governor for three years in succession, upon the same terms, and during that time resided in Hambleton. Bayley, J. "The last objection is decisive of the case: (namely) the appointment for one parish is clearly bad. But it seems to me that the other objections are fatal also. It has been decided that the situation of master of a workhouse is not a public office, unless it is so constituted by an act of parliament (*Rex v. Mer sham, post, 747*); consequently, previous to the 22 Geo. III. c. 83, no service in such a situation could have conferred a settlement. It is true, that statute calls it an office, but the 39th section provides that nothing contained in the statute shall alter or affect the settlement of any person; therefore it leaves the office just what it was before, and a settlement cannot be gained by service under it. Upon all these grounds, therefore, it seems to me, that the order of sessions ought to be quashed." Holroyd, J. and Littledale, J. concurred.

Office of town crier is sufficient.

The office of bellman and town-crier is also an annual office within the statute, and will give a settlement in that parish wherein such officer resides, if his office extends over several parishes of which the town is composed. (See *Rex v. St. Nicholas, post, 757*.)

A sworn tithing-man for part of a parish is sufficient.

Rex v. Fittleworth, Burr. S. C. 238. A certificate man was elected and sworn a tithing-man for a tithing which did not extend through all the parish. By the court: "It is not necessary that the office should extend throughout all the parish; the act only requires the executing some annual office in the parish."

Bailiff or ale-taster for a borough is an office.

Rex v. Whitchurch, Burr. S. C. 365; 2 Bott, 163. The pauper was nominated at the court leet, and sworn into the office of *bailiff* or *ale-taster* for the borough; and he executed the office for a year: the office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court leet there: the borough is not one-sixth part of the parish, the bailiffs have never executed any authority over the parish at large, great part of the parish knew nothing of such office; new married men and new comers were frequently nominated for the sake of colt-ale. Ale-taster is an ancient and known officer, and as to the objection of the parish, *Rex v. Fittleworth (supra)* is in point, and this is a good settlement.

Tithing-man is an office.

Burliscomb v. Sanford Peverell, 1 Stra. 544. The sessions adjudge that the office of *tithing-man* is not such an office as that a man thereby shall gain a settlement. But by the court: "The order must be quashed; for this is an annual office in the parish within the words and meaning of the act."

Whether a certificate man entering upon office immediately, but not sworn in till after the expiration of a year, be sufficient, *Qu.*?

Holy Trinity v. Garsington, Fol. 123; Sett. & Rem. 95. A certificate man was appointed *tithing-man* by the steward of a leet. He served a year; but was not sworn in till half the year was expired. The court inclined that it was a good settlement; but being a new case, and somewhat doubtful, they ordered a second argument to this point, whether he was legally placed in the office, or not, as not having been sworn till half the year was expired? But the order was afterwards quashed for want of complaint that the pauper was actually become chargeable.

A certificate man chosen borsholder, but not sworn in, gains no settlement.

Wingham v. Sellindge, 2 Stra. 1199; Burr. S. C. 223. A certificate man was told by his wife that the borsholder had left a *wooden tally* at his house, as a token that he had been chosen *borsholder* at a court leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a presentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a

justice directed to the borsholder, and for that whole year he was willing and ready to execute the office. By the court: "When an order of sessions states the facts specially, the court must take it, that the justices have stated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that here is no foundation for supporting a legal placing."

Rex v. Whittlesea, 4 T. R. 807. Removal from Crowland to Whittlesea. Case:—The pauper, during his residence in Crowland, was legally chosen a hog-ringer for that parish for one year, at a court leet for the manor of Crowland: he was presented by the jury for the office, and was sworn therein, and paid 4d. for the oath, and he served such office two years on his own account. The duty of such office is to attend the open commons to see that all hogs turned thereupon were rung, and such hogs as were not rung to take to the pound, which he frequently did, and he always received 1d. for impounding, and 6d. for ringing, each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of Crowland. Lord Kenyon, C. J. "It is stated in the case that this is an annual office of great antiquity, and serviceable to the parish at large, and that there is an oath of office; therefore it seems to me, that it is a public annual office within the meaning of the act. *Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish.* It was once made a question, whether shoeing the horses of the lord of the manor was not equal to notice? But it was determined not to be equivalent. If this person had been hog-ringer to certain individuals only, he would not have thereby gained a settlement; but he was not merely an officer of A., B., or C., but of all the inhabitants of the parish. It has been held, that a tithing-man, a borsholder, an ale-taster, or a hayward, may gain a settlement by serving either of those offices; and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case." Order of sessions confirmed.

Rex v. Lew, 8 B. & C. 655; 3 M. & R. 369. Order of removal of W. Purlrick from Charlbury to Lew confirmed. Case:—The pauper was on the 16th of October, 1820, duly elected by the inhabitants of Charlbury an assistant overseer, pursuant to the 59 Geo. III. c. 12. The vestry determined that the pauper should perform the duties and receive the salary mentioned in the warrant of appointment. On the 18th he was appointed by a warrant under the hands and seals of two justices; it recited that the inhabitants had nominated the pauper to be the assistant overseer, and did fix the yearly sum of 10l. as and for the yearly salary for the execution of the office; it then appointed him to be the assistant overseer, and authorized him to perform the duties, and receive the salary. It was not stamped: the pauper performed the office for a year. Bayley, J. "I have no doubt that the pauper held an office within the meaning of the 3 & 4 W. & M. c. 11, and that he executed that office for himself, and on his own account. It was a public office in the parish; the duties were executed throughout the parish. He was appointed by the inhabitants in vestry assembled. I think also that it was an annual office; the pauper was to receive a yearly salary for executing the duties of it; and although he might be removed within the year, he would continue in the office for a year, unless something was done to determine it during that period. He had an estate for a year in his office, defeasible on a particular event, as in the case of a lease for a year, determinable by notice within the year. In that case the lessee is in the estate for the year, though it may be determined by notice. (*Rex v. Herstmonceaux*, 6 B. & C. 550; 1 M. & R. 426; *ante*, 633.) The office held by the pauper was held by him in his own right, not as deputy of the principal overseer. The great difficulty in this case arises from the want of a stamp. If I were at liberty to conjecture, I should

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He must be the officer both *de facto* and *de jure*.

A settlement gained by serving the office of hog ringer for the parish.

That of an assistant overseer is an office within the act, but the appointment must be duly stamped. (a)

(a) By 4 & 5 Will. IV. c. 76, s. 86, laws shall not be chargeable with any the appointment of any paid officer engaged in the administration of the poor stamp duty.

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say, the legislature did not contemplate an appointment of this description, but I am bound to give effect to the words of the statute. The 55 Geo. III. c. 184, Sched. tit. *Grant*, requires that any grant or appointment made by any person to any office or employment by writing, where the salary, fee, or emolument, appertaining thereto, shall not amount to 50*l.* per annum, shall have a stamp of 2*l.* Here there is an appointment in writing to an office or employment where the salary does not amount to 50*l.* It is, therefore, within the very words of the act, and required a stamp." *Littledale, J.* "The appointment requires a stamp. There are some general exemptions at the end of that part of the schedule which relates to offices, but this is not among them. I have no doubt on the other point. This is called an office in the act. It is from the nature of the thing an office. If an overseer be an officer, an assistant overseer is equally so. It is also an annual office, for there is an annual salary; and although he may be removed within the year, still he is appointed to the office for the year." *Parke, J.* concurred. Order confirmed.

Collector of the land tax is a public annual office.

Rex v. Hammond, 2 *Bott*, 157. By *Pratt, C. J.* "Serving the office of collector of the land tax is a sufficient office to gain a settlement within the 3 & 4 Will. III. c. 11, s. 6, for it is not necessary that the office should be a parish office; any office is sufficient, so that by the notoriety of it, it may be presumed that the parish had notice of the person's being come into the parish."

Collector of duties on births and burials.

Bisham v. Cook, 1 *Str.* 411. The pauper lived in Bisham, and executed there the office of *collector of the duties* given by 6 & 7 Will. III. c. 6, on *births and burials*. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish; besides, it was not stated in the order that this was an annual office, as it must be to give a settlement within the express words of the act. By the court: "The reason why the executing an office gives a settlement without notice, is because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice; can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not to be a *parish office*, but a *public annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears, on looking into the statute, that the power given to the commissioners is to appoint *a person who shall be collector of the duties for a year*, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this?" Order confirmed.

Needs not be a parish office, but a public annual office in the parish.

A curacy is not a public annual office.

Helsington v. Over, *Burr. S. C.* 746; 2 *Bott*, 243. Order of removal of Rev. John Langhorn from Helsington to Over confirmed. Case:—On the 1st day of October, 1766, the vicarage of the parish of Over was sequestered for three years, or till the bishop should release the same: On the 12th of October, 1766, the pauper was ordained deacon, in order to supply the cure of Over during the sequestration. From the 15th of October, 1766, to the 15th of June, 1768, he, by an exchange with the curate at Acton, resided and did duty in Acton, but received his salary regularly from the sequestrators of Over. From the 15th of June, 1768, to the 1st of October, 1769, he resided and did duty as curate at Over, when the sequestration ended. It did not appear that he had any license to the curacy of Acton. *Lord Mansfield, C. J.* "There is no colour for considering this as an annual office: It is no office at all." And *Aston, J.* said, "You cannot call it an annual office, when the sequestration may be determined at any time. It is not like the annual office of a constable or a tithing-man. They are appointed generally, and to serve for a year. That of parish clerk is a freehold; and it is upon that foot that a parish clerk gains a settlement." Orders quashed.

Same point.

Rex v. Wantage, 2 *East*, 65. R. Puzey, clerk, was nominated by the rector of East Lockinge to be curate of the same, and was duly licensed, with a yearly stipend of 45*l.* The license authorized the party during

pleasure "to perform the *office* of curate in the parish, &c., in reading the common prayer and performing other ecclesiastical duties belonging to the said office according to the form prescribed," &c. Puzey entered on the curacy the same year, and performed the duties for six years, during which he resided in the parsonage house in the parish. Lord *Kenyon*, C. J. "There is no pretence to say that this is an office the executing of which for a year will give a settlement. The statute of 3 & 4 W. & M. c. 11, s. 6, was evidently intended to be confined to inferior annual officers, such as constables and the like, known to the parish; and though in some instances the construction has been carried farther, yet I am not inclined to extend it to cases still farther from the contemplation of the legislature." Order of sessions confirmed.

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Rex v. Milborne, 2 *Str.* 1225. T. Membury was certificated from Sheepshead to Milborne, and staid there ten years, during which time Lady Elizabeth Hastings conveyed lands to trustees for several charities out of the profits; and among others the sum of 10*l.* a year to the charity school at Milborne, to be paid to the vicar there for the time being. In the special order of sessions it was stated that the certificate man officiated as schoolmaster several years, and received the 10*l.* a year from the vicar: and this the sessions held gained him a settlement in Milborne, where they declared he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10*l.* a year, and executing an annual office. But by the court: "The order must be quashed; a schoolmaster is not an *office*, but only an *employment*; and what interest T. M. had in the school, whether for life or otherwise, or how he came into this employment, doth not appear; and the legal right to receive the salary is in the vicar, who not caring to officiate himself has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less a certificate man."

Schoolmaster not a public officer.

Rex v. Mersham, 7 *East*, 167. Removal from Boxley to Mersham confirmed. The parts of the case upon which the question was decided were, that the pauper at a vestry meeting offered his proposals to become master of the workhouse; that at a subsequent vestry meeting, at which twelve of the inhabitants were present, he was informed by the parish officers that he was appointed master of the workhouse of the parish of B. at a salary of 16*l.* per annum. No time was ever mentioned for which he was to hold his situation. No appointment was made in writing, nor any entry in the parish books. After serving for four years, he was dismissed at a quarter's notice. After argument, Lord *Ellenborough*, C. J. said, "The principle on which this mode of gaining a settlement has been given is undoubtedly notoriety to the parish, but a settlement can only be gained in this mode upon the terms of the act of parliament; viz. by executing 'a public annual office or charge in the parish:' which brings us back to the question, whether that which the pauper was appointed to execute were a *public office or charge*? And it appears to me that he cannot be considered as a public officer. An *office* must be derived either immediately or mediately from the crown, or be constituted by statute; and this is neither one nor the other, but merely arising out of a *contract* with the parish, which the parish officers with the consent of the parishioners are by the statute enabled to make with any person for the maintenance and employment of the poor. It might as well be said that a nurse employed to look after the pauper, or any other employed in like manner to do any part of the parish business, was an officer. The question might admit of a different consideration if any distinction had been established between an office and a charge, but I can find none either in any case or in the sense of the statute. The determination of the appointment at a quarter's notice repels the presumption that it was an *annual* office or charge; therefore as far as we can collect the intended duration of the employment from the acts of the parties, it appears that the parish might put an end to it within the year if they thought proper; upon the whole therefore it appears neither to have been an office, nor a public office, nor a public annual office within the statute." *Lawrence*, J. said, "It was clearly no *office*; but

Master of a workhouse held not to be a public officer.

Time of determination evidence of contract.

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An appointment from one court till the steward should please to hold another confers no settlement.

No settlement gained by serving an office to which a local statute authorized the appointment for a discretionary period.

only an *employment* arising out of a contract, between which and an office there is a great distinction. (*Rex v. Milborne, ante, 747.*) And he agreed in the definition of the word *charge*, that it must be taken to mean something of the same kind with *office*, though it may not commonly be known under the name of an *office*." *Le Blanc, J.* "If this were to be deemed a public annual office or charge within the act, it would extend to every case where a person had a duty to perform which from its nature must be known to the parish in general. But there is a difference between an employment created by the parties themselves, which they may put an end to whenever they please, and that which exists or is created by law. Now this man was in the former situation. It was in the option of the overseers and parishioners to have such a person in such an employment or not; and they could put an end to the employment altogether whenever they pleased. It was created by themselves, and depended upon their contract. I cannot therefore call this an office or charge within the meaning of the act of parliament." Both orders confirmed.

Rex v. Bow, 8 T. R. 445. The pauper, at a Michaelmas court-leet, holden by adjournment for Chumleigh, November 16, 1792, was appointed to the office of ale-taster to the borough, and duly sworn, according to the custom of the manor, to *execute the office for one year thence next ensuing, or until he should be lawfully discharged.* He entered upon the office and served till November 1, 1793, when at a similar court holden by adjournment a new officer was appointed. No business is transacted at the original court; and there is only one original court in the year, and it is held within the month after Michaelmas at the convenience of the steward. *Lord Kenyon, C. J.* "This is an attempt to carry the point further than in *Rex v. Newstead, (ante, 358).* This is not an appointment for a year, from one moveable feast to another, but from one court till it should please the steward to hold another. The statute is express, and *Rex v. Fittleworth (ante, 744,)* shows that it has been construed according to its plain meaning."

Rex v. Middlewich, 4 Nev. & M. 682; 3 Ad. & El. 156. Appeal against an order whereby M. C. Yarwood was removed from Church Hulme to Middlewich. Order confirmed. Case:—Both townships support their own poor. The pauper, two years before the date of the order, being then settled in Middlewich, was duly appointed under the Cheshire Constabulary Act assistant petty constable for fourteen townships in the county of Chester, of which Church Hulme was one, and under that appointment he served the office fifteen months, during the whole of which time he resided in Church Hulme. The question for the opinion of the court was whether the pauper gained a settlement in Church Hulme by serving an office. *Lord Denman, C. J.* "If this office were annual in its nature we should have wished to see the appointment. But we think that it is not annual in its nature, and that it may last for such time as the justices think proper. The case of *Rex v. Lew (8 B. & C. 655; 3 M. & R. 369; ante, 745;)* seemed at first to present a difficulty in the way of this view. But, first, the assistant overseer's office corresponds with that of overseer, which is annual, and by the statute (59 Geo. III. c. 12, s. 7,) it is to continue till the appointment is revoked, or till the officer resign. Secondly, the salary is to be annual by the same. Thirdly, in *Rex v. Lew* the salary was in fact annual. The case is therefore easily distinguishable from the present, where the duration of the office depends on the discretion of the justices." *Little-dale, J.* "I am of the same opinion. In *Rex v. Lew* the officer was an assistant overseer, appointed under the statute 59 Geo. III. c. 12, s. 7, which directs that he shall execute all such duties of overseer of the poor as shall be expressed in the warrant of appointment, in like manner and as fully to all intents and purposes as the same may be executed by an ordinary overseer. Now the office of an ordinary overseer is annual. The person appointed assistant overseer is to continue in office till he shall resign or till his appointment shall be revoked, it is therefore an annual office defeasible. *Rex v. Lew* is consequently inapplicable. By the words in the act now before us, the appointment is to be for so long as the justices think expedient, it is therefore not an annual office." *Patteson, J.* "In *Rex v. Lew* the appointment,

if for less than a year, would not have been valid." *Coleridge, J.* "I am of the same opinion. If the office were annual in itself, we should recur to the appointment, in order to see whether it was annual, in fact for a year; there is nothing to show that it would be an annual office. I have always understood that the office must be such, that if the appointment were general, it would be assumed that the tenure of it was to be for a year." Order of sessions confirmed.

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Rex v. Newmarket, St. Mary, 3 Ad. & El. 151; 4 Nev. & Man. 693, S. C. Appeal against an order whereby John Porter was removed from Fordham to Newmarket, St. Mary. Order quashed. Case:—The appellants relied upon a settlement in the respondent parish, derived from the pauper's father, who whilst residing in that parish served there for two years the office of pinder. He was appointed at a court baron held for the manor of Fordham Biggen, on the 5th of September 1787; the appointment being entered on the court rolls in the following words: "And lastly, the said homage did elect John Porter pinder for the town of Fordham for the year ensuing, and until another person be chosen in his stead. And the said John Porter came into court and was duly sworn to execute the said office." The first entry on the court rolls of the manor of Fordham Biggen which can be found of the appointment of any officer, is at a court baron held on the 1st of November, 1693. From that period to the year 1810, when the parish of Fordham was inclosed, there were four courts leet with courts baron, and a great majority of courts baron without a leet, at which the pinders and other officers of the manor were appointed and sworn in. In the other instances of courts leet and courts baron being held together (except one where the pinder was appointed by the homage only) the pinders and other officers of the manor were elected by the jury of the leet. From 1739 to 1794 there were eight consecutive courts baron, at which certain persons were in like manner as the pauper's father elected pinders by the homage and sworn in, and there was not one instance on the court rolls of any such appointment at a court leet held as such only. There are in all five manors in the respondent parish, of which the manor of Soham and Fordham is the most extensive; but there is no paramount manor. There were previous to the inclosure of the parish three commons in the manor of Fordham Biggen, over which the inhabitants of Fordham had common rights. There were also two pounds, one belonging to the manor of Fordham Biggen, the other to the manor of Soham and Fordham. The only question for the opinion of the court was, whether the pauper's father was legally placed in the office of pinder under the above-mentioned appointment by the homage of the court baron, 1787, so as to acquire a settlement in the respondent parish. The case stated as above was argued in Easter term, 1832, when this court sent it back to the sessions to find whether the town of Fordham were co-extensive with the parish of Fordham, and more or less extensive than the manor of Fordham Biggen. At a subsequent session the justices found that the town of Fordham was co-extensive with the parish of Fordham, and was more extensive than the manor of Fordham Biggen, and it confirmed the order of removal subject as before to the opinion of this court. *Per curiam*: "The rule for quashing the last order of sessions must be discharged." Order of sessions confirmed.

Appointment to the office of pinder for the town of F. being made at a manor court, which manor did not comprehend the whole of the town of F.: it was held that no settlement was gained, as the homage of one manor cannot elect an officer for a parish which lies in several manors.

Rex v. Ilminster, 1 East, 83. Removal from Honiton to Ilminster confirmed. The case originally stated was, that the pauper was appointed governor of the workhouse in Ilminster, under the annual salary of 20*l.* He served for five years, and regularly received his salary: at the end of that time he was dismissed: at the time of his appointment he was put by the parish officers into possession of certain apartments in the workhouse appointed for that purpose, and which had been occupied by the former governor. Upon the first amended case these words following were added after the word officers, "(in conjunction with two of the principal people of the town, who acted as inspectors of the accounts and conduct of the overseers.)" Lord Kenyon, after the case had been argued the first time, intimated a strong opinion against the settlement, considering the appointment of the pauper merely in the nature of a servant to the parish officers, by whom he might

Governor of a workhouse, if found by the sessions to be a public annual office, gains a settlement.

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A female organist at a chapel, appointed by a select vestry at an annual salary, paid half yearly, and which she held nearly four years, being then dismissed on complaint by an order of vestry, does not thereby gain a settlement; it not being such an office as the statute contemplated.

have been dismissed at any time. In the second amended case it was stated, that the said office of governor "was a public annual office." And the court then said, that by this finding, "that it was a public annual office," they had precluded any further discussion. (a)

Rex v. St. George, Hanover Square, 2 Nev. & M. 505; 5 B. & Ad. 571. Appeal against an order, whereby Catherine Seaman was removed from St. George, Hanover Square, to St. Peter, Paul's Wharf. Order quashed. Case:—The parish of St. George, Hanover Square, is governed by a select vestry, consisting of 101 persons. In the year 1827 a chapel was erected in North Audley Street, in the said parish; and on the 21st of January, 1828, the vestry of that parish took into consideration what name should be given to the chapel, then nearly finished, and resolved that the same should be called St. Mark's Chapel, and that advertisements should be published, stating that the vestry would meet on the 11th of February to appoint an organist for the chapel. On the 11th of February, 1828, an election took place at the board room in Mount Street, by the select vestry, of an organist to the said chapel, on which occasion there were about forty candidates, and the election fell upon the pauper, as appears by the following minute, "11th of February, 1828. The vestry, pursuant to their resolution of January 21st, proceeded to the election of an organist for St. Mark's Chapel, and appointed Miss Catherine Seaman to that situation, to commence when the organ was in readiness for use, at a salary of 60*l.* per annum." In May, 1828, the organ being completed, she entered upon her duty, and continued to perform it, and to reside in the respondent parish, and received her salary from the vestry through the vestry clerk half yearly (with the exception of the first payment, which was 25*l.* only from May to Michaelmas, 1828), until the 31st of March, 1832, when she was discharged by the vestry, as appears by the following entry in their minutes: "At a meeting of the vestry held on the 31st of March, 1832, much discontent having been expressed by the pew-renters from time to time to the Rev. Allen Cooper, the minister of St. Mark's Chapel, of the total inefficiency of the present organist, resolved that she be removed; and that the Rev. Mr. Cooper be requested to look out for and recommend a competent person to succeed her, upon the same salary as is now enjoyed by her; it being understood that the person to be appointed shall continue to pay her her salary up to Midsummer next." The question for the decision of the court was, whether, under these circumstances, the pauper gained a settlement in St. George, Hanover Square. *Denman*, C. J. "The principle on which this kind of settlement rests is notoriety; but that must be attained by serving an office within the meaning of the statute. The question is, whether the present be a case in which that has been done. I think it comes within the objection which prevailed in *Rex v. Mersham* (7 *East*, 167, *ante*, 747). According to the argument which has been urged, a settlement would be gained in every case where the party had executed an annual office which was notorious. But I think an office created by the parties themselves, who agree upon the employment, and which they may put an end to at pleasure, does not come within the meaning of the statute." *Parke*, J. "I am of the same opinion. If a settlement was gained in this case, it might be said that the fiddlers and bassoon players in a country church, or even the pew openers, executed offices within the statute." *Taunton*, J. "The office of organist does not necessarily give notoriety; for when persons hear the organ it does not follow that they know who plays it." *Patteson*, J. concurred. Order of sessions quashed.

Rex v. Corfe Mullen, 1 Bar. & Adol. 211. J. Miller was removed from Sturminster Marshall to Corfe Mullen. Order confirmed. Case:—The pauper having obtained a settlement by hiring and service in the parish of Corfe Mullen, went to reside in the tithing or chapelry of West Holme, a place maintaining its own poor, as shepherd to Mr. Kemp. On the 5th of October, 1824, a court leet for the hundred of Hasler was held, in which hundred the tithing or chapelry of West Holme is situated. At that court

A tithing-man, going out of office, nominated his shepherd, Miller, to serve as tithing-man the following year. Miller was chosen at a court leet holden Octo-

(a) It will be observed that this position is denied in *Rex v. Clixby* (*ante*, 743).

Kemp, the tithing-man for the preceding year, appeared, and acted in his office of tithing-man. On the same day, at the same court, Kemp nominated the pauper as a fit person to serve the office of tithing-man for the tithing or chapelry of West Holme, and he was appointed by the jury for one year. The entry from the books of the court leet appeared as follows:—"October 5th, 1824. Tithing-man of West Holme. George Kemp appears, and Joseph Miller is chosen into the office for the year ensuing, and he is directed to be sworn in before a magistrate within one month, under the penalty of 5*l*." But Miller not being present, the steward gave him notice of the appointment as follows:—"Hundred of Hasler to wit. At a court leet held this day for the said hundred you were chosen tithing-man for the tithing of West Holme, and you are hereby required to be sworn into your office before a magistrate for the county of Dorset, within one month after the date hereof, under the penalty of 5*l*. Given under my hand and seal in the said court the 5th day of October, 1824. E. Castleman, Steward." When this notice was shown to the pauper he refused to receive it, or to pay the usual fee to the person who served it. The pauper was never sworn into office, but executed all its duties. He was not a householder either at the time of his appointment, or at any time while serving the office; but occupied part of a house, rent free, found for him by his master, Mr. Kemp, in West Holme, and resided there while serving the said office. On the 4th of October, 1825, another court leet for the hundred of Hasler was held, when the pauper was present, and acted as the tithing-man of West Holme, and paid the essoign pence and lawday silver, as is customary with other persons serving the office. At this court another person was appointed tithing-man for the year ensuing. The entry of this appointment in the books of the court leet was exactly in the same form as the entry of Miller's in the preceding year. One objection was, that the pauper did not serve the office on his own account, but as deputy to Kemp. *Bayley, J.* "The sessions have not found so, and we cannot infer it. In *Rex v. All Cannings* (*ante*, 740,) the facts expressly appeared on the case. It was urged, that the pauper here was not of the description of persons liable to serve the office." *Parke, J.* "That might have been an objection to the appointment, but he has been appointed and served. A similar objection was noticed in *Rex v. All Cannings*, but only as tending to show that the pauper served as a deputy." *Bayley, J.* delivered the judgment of the court: "The question in this case was, whether the pauper obtained a settlement in the tithing of West Holme, by serving the office of tithing-man for that place. He was appointed to the office on the 5th October, 1824, and we think we must infer from the special case, that he accepted the office on that day, and executed all its duties until and upon the 4th October, 1825, which, as the law does not regard the fraction of a day, constitutes 'one whole year.' There is no doubt that the pauper acted on his own account, and the objection that he was not compellable to serve the office is of no weight. The pauper was never sworn into his office; and the only remaining point in the case is, whether that circumstance was necessary to enable him to gain a settlement? The statute 3 & 4 W. & M. c. 11, s. 6, upon which this question turns, provides, 'That if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any public annual office or charge in the said town or parish during one whole year,' &c. 'then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required.' The words of this section, in their ordinary sense, require nothing more than the execution of the office *de facto* during one whole year; there is nothing in the context to induce us to come to a conclusion that the legislature meant to use the words in any other than that sense; and this construction is consistent with the supposed object of the statute, which appears to have been to substitute the notoriety of the execution of the office for the notice in writing required in most other cases, as explained in the judgment of Lord Tenterden, in *Rex v. Holy Cross, Westgate* (*post*, 753). But it is said, that this statute and that of 9 & 10 W. III. c. 11, are in *pari materia*, and are to be

2. What Office will gain a Settlement.

ber 5th, 1824, and was ordered to be sworn into office within one month, under the penalty of five pounds. He never was sworn in, but executed the office; while he did so he was not a householder, but lived in part of a house found for him by his employer. His successor was chosen at a court leet October 4th, 1825: Held, that he gained a settlement in the place for which he served, although not sworn, by executing there, on his own account, a public annual office for one whole year, pursuant to 3 & 4 W. & M. c. 11, s. 6; and that the question whether or not he was legally placed in the office, according to 9 & 10 W. 3, c. 11, did not arise, he not having been a certificated person.

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construed together; and that the latter statute may be considered as giving a parliamentary exposition of the former: and if so, that no one can be 'legally placed' in an office, unless he takes the oath under which it should be executed. We do not, however, think that the latter statute is to be deemed to alter or affect the construction of the former, as the latter relates to a particular class of persons, namely, certificated paupers alone; and it is impossible to say that the legislature did not mean to superadd, with reference to that class of persons, another circumstance, namely, that of being legally placed in the office, as a condition of their obtaining a settlement. It becomes therefore, in this view of the case, unnecessary to decide whether the pauper was 'legally placed' in the office, according to this latter statute, not having taken the required oath. There can be no question that he executed the office *de facto*, nor indeed can there be any that, for some purposes at least, he executed it *de jure*. Swearing in may be rendered necessary, either to enable the party to serve the office, or to impose a greater sanction on his discharge of it. We think, in this case, the latter is the object. A month is given for taking the oath; yet the year commences from the appointment. Can it then be said that the party is not in office till he is sworn? In one of the cases which have been cited, the swearing in of a tithing-man at the end of half a year was considered as taking effect *ab initio*. It is laid down in an anonymous case, 1 *Ventr.* 267, that a churchwarden (and no distinction can be drawn between his case and that of a constable) may execute his office before he is sworn, though it is convenient he should be sworn. And it may be observed, that a mandamus to swear such an officer in is referred to by the court immediately afterwards in that case; which must therefore be issued, not on the ground that the oath is essential to the due execution of the office, but because it is fit and proper for the interest of the public that the office should be executed under its sanction. But on the statute 3 & 4 W. & M. c. 11, alone, we think it clear that the pauper gained a settlement in West Holme by the execution of the office *de facto*." Order of sessions quashed.

3. *Of the Time
of Serving.*

Serving a part of the year only is not sufficient. A person executing an office is removable when chargeable.

3. OF THE TIME OF SERVING.

Rex v. Fittleworth, Burr. S. C. 238; 2 *Bott*, 252. A certificate man was elected and sworn a tithing-man. He executed the office a little more than five months, and then became chargeable, and was removed. *Lee, C. J.* "The question is, whether a person coming into a parish under a certificate, who is made a tithing-man, and exercises his office in part only of the parish, and for half a year only, gains a settlement? To this three objections have been made: 1st, that the order of removal is bad, because at the time when he was removed he was in the execution of a public office, from whence they had no power to remove him; and it has been compared to the case of a servant, whom the justices cannot remove: but for this they have not cited any authority; and if a servant should become chargeable to a parish, I think he may be removed. This act of the 8 & 9 Will. III. describes the time when a certificate man shall be removed, that is, when he becomes chargeable, without any limitation; so that the justices by this act had certainly power to remove the pauper. The second objection is, that this office did not extend to the whole parish: but it is stated in the order that he exercised it in the parish; which is complying with the very words of the act of parliament, which says that he shall execute it *in* such, and not *through* such parish. As to the third objection, which is the chief, I do not know that any case has been determined as to that purpose. That of *Garsington* was never determined, and besides differs essentially from the present case, as Sir *John Strange* has shown. The 3 & 4 W. & M. differs in words from this act, yet it would be odd to place him on a different footing from other paupers, who are to gain settlements by the exercises of annual offices, and that is for and during a year; which must be the construction of this act, otherwise the bare placing a certificate man in office would gain him a settlement immediately. As to the case of Mr. Lloyd about the taking of a tene-

ment, there are no words about his living a year, and it is the credit he gets by the taking that fixes him in the parish; but in the present case he gains it by the execution of the office; and though the words of the 3 & 4 W. & M. have no relation by words to this act, yet I should think it ought to have the same construction." *Wright and Dennison, Js. of the same opinion.*

Cold Ashton v. Woodchester, Burr. S. C. 444; 2 Bott, 253. There was a custom to serve the office of tithing-man for half a year only at a time. By Lord Mansfield, C.J. "This cannot be an annual office to gain a settlement. In this case the pauper had served the office of tithing-man in Cold Ashton for half a year, and twenty days after for another half year.

Rex v. Holy Cross Westgate, 4 B. & A. 619. Order of removal of Edward Best from Holy Cross, Westgate, in Canterbury, to Holy Cross, Westgate, in Kent, confirmed. Case:—The city of Canterbury is divided into six wards, and two of the twelve aldermen of the city are appointed for each ward; a court-leet is held annually by the two aldermen, at which a constable and borsholder for the ward are chosen. In October, 1817, and for some time previously the pauper resided and carried on business in St. Mary Northgate, Canterbury, which is in the ward of Northgate, that ward containing the parishes of St. Mary Northgate and St. Alphage. On the 21st of October, 1817, the annual court-leet was held for the ward of Northgate, at which the pauper was duly chosen borsholder of the ward for the year ensuing, and upon being sent for he attended at the court and was regularly sworn in; the staff of office was delivered to him by the former borsholder. A day or two afterwards a dispute arose between some persons, and he was desired to preserve the peace; in consequence of which he fetched his staff and put an end to the dispute, but he did not do any other act as borsholder than that. After he had been sworn in a few days he was desired to attend the monthly meeting of the magistrates, and he attended with his staff; he was called into the council chamber and informed by the then mayor that as it was a question as to what parish he belonged, he must leave his staff there for the present, and that he should know further about it in a few weeks; he left his staff accordingly, and not having heard any thing more, he did not act, nor was he called upon afterwards to act as borsholder. The steward of the leet notified the pauper to the magistrates as the sworn borsholder for the ward of Northgate, and he appeared so in the list of peace officers entered in their record book. The succeeding court-leet for the ward of Northgate was holden on the 20th of October, 1818, and the pauper resided during the whole of the year in St. Mary Northgate. The duties that were required to be performed by the borsholder of the ward of Northgate during the remainder of the year were performed by another person, who resided part of that time within the ward, and part in the borough of Staplegate, adjoining to the ward, but not within the jurisdiction of the city of Canterbury; but that other person was not chosen or sworn in as borsholder of the ward, nor did he attend the sessions in that character, nor was his name enrolled in the list of peace officers. *Abbott, C. J.* "At the time of passing 3 & 4 W. & M. c. 6, it was possible for any individual to gain a settlement by a residence for forty days in the parish. The object of that act was to add to this the necessity of delivering to the parish officers a notice in writing, which they were required to read in the church, and to register, in order that there might be public notice to all the inhabitants that they might, in case the individual was likely to become chargeable, procure his removal from the parish. But that act contemplated two cases in which no notice in writing was to be given, viz. the serving an annual office, and the payment of parish rates. Its object was obviously notoriety. Now this is only attained by the actual execution of the office, and not by the appointment to it. Although therefore it does appear that the pauper in this case was irregularly discharged from his office, and another person irregularly appointed to succeed him, yet as he did forbear to do the duties of it, I think he cannot within the statute be considered as having executed a public annual office in the parish, and that he did not thereby gain a settlement." Order confirmed.

3. Of the Time of Serving.

Serving office for half a year at a time only, gains no settlement.

A pauper was legally sworn in as borsholder at a court leet, and executed the office a few days, when he was irregularly discharged from office by two magistrates, and another person appointed: but he acquiesced in this, and did not in fact execute the office: Held, that this did not confer a settlement.

3. *Of the Time of Serving.*

See also *Rex v. Yalding* (*ante*, 741), one of the points in which case was that the pauper had not served for a year, which was held a good objection.

4. *Residence.*

If a church yard lie in two parishes, the sexton may gain a settlement in the one in which he resides, although no part of the church lies within that parish.

4. RESIDENCE.

Rex v. Liverpool, 3 T. R. 118. Samuel Littlemore removed from Liverpool to Stourton. Order quashed. Case:—The pauper, about sixteen years ago, came to reside in Liverpool, and while he resided there was elected sexton by the proprietors of seats in the church or chapel of St. James's, at a vestry held in the presence of the churchwardens, being recommended by the then minister to that office, and executed that office six years, lodging all the while in Liverpool. The boundary between Walton and Liverpool is in the chapel-yard of St. James's; the church and part of the church-yard stands in Walton, and the other part of the church-yard is in Liverpool; but no corpse was ever buried in that part (within the parish of L.) whilst the pauper executed the office, though corpses have been buried there since. The inhabitants of Liverpool, seatholders, and others, constantly attend the church of St. James's, in proportion of fifty to one of any other parish or place. It was admitted that the office of sexton was such as would entitle the person executing it to a settlement; but it was contended that the office must be executed in the town or place, in order to give a settlement. But here he was chosen sexton to the chapel of St. James's, which stands in Walton; and it appears that he never executed any part of the office in Liverpool. The executing of an annual office is equal to giving notice, but the execution of this office in Walton was no notice to the parish of Liverpool. The sexton is appointed to the church, and not to the church-yard; for it appears from the definition of a sexton in *Burn's Eccl. Law and Chamb. Dict.* that he is an officer to take care of the vessels, vestments, &c. belonging to the church, and to attend the minister and churchwardens at church; and this office is entirely distinct from that of a grave-digger. Lord Kenyon, C. J. "There is no doubt but that part of the office of sexton consists in digging graves; this is different from that of sacrist, which is an office scarcely known since the Reformation, except in some of the cathedrals, whose duty it is to take care of the sacred vestments. And it is as clear that the office of sexton is a public office within the meaning of 3 W. & M. c. 11, s. 6. In this case the church-yard lies in two parishes, and the sexton gained a settlement in that in which he resided." *Per curiam*. Order of sessions confirmed.

Warden for a borough, which extends itself into several parishes, gains a settlement in the parish in which he lives.

St. Mary v. St. Lawrence in Reading, 19 Vin. Abr. 379; 2 Bott, 156. Mr. Foley says the question was, whether the being warden for the borough, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And by the court it was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley*, 121. But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. Viner, from a manuscript note which he had of this case, says, "The officer is mentioned there to be warden of the borough (which is most likely), being in nature of a tithing-man to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a public officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him." And by the court it was held a good settlement, being within the express words of the statute of executing an office in a town or parish.

Constable of a city, comprehending several parishes, gains a settlement in that parish in which he lives.

St. Maurice v. St. Mary Kallendar, in Winchester, 1 Burr. S. C. 27; 2 Bott, 158. William West, a certificate man from St. Thomas's, came into St. Mary Kallendar, in Winchester. He was afterwards chosen one of the constables for the city of Winchester, which city consists of several other

parishes besides that of St. Mary Kallendar, and was legally placed in that office, and executed it in and through all parts of that city for one whole year; during which time he resided in the parish of St. Mary Kallendar. By the court, unanimously: "He avoided his certificate, and consequently gained a settlement in St. Mary Kallendar by executing this office in that parish, though chosen by the whole city, and not by the parish of St. Mary singly, and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish being legally placed in such office."

Rex v. Amlwch, 4 B. & C. 757; 3 D. & R. 303; 1 D. & R. Mag. Ca. 304. Order of removal of John Owen from Amlwch, in the county of Anglesea, to Llanerchymedd, quashed. Case:—The market town or village of Llanerchymedd lies partly in the parish of Amlwch, the church of which is five or six miles distant, partly in two other parishes, and partly in the vill of Llanerchymedd, to which place this removal is made. The vill of Llanerchymedd lies in the middle of the village, and consists of a small plot of land, the property of the parson, on which stand the whole of the church and churchyard. There are also within it twelve or fifteen houses, and a few acres of land. It has of late maintained its own poor, and the inhabitants have been assessed to the land tax, as in the hamlet of Bryngwallen, which is in the parish of Ceidio. No churchwardens were ever known to be appointed, and no evidence was given of the appointment of a constable, although it appeared that the pauper's father had been seen acting as one for several years. The church or chapel of Llanerchymedd is kept in repair of right, one side thereof by the family who own the Llwydiarth estate, and the other side by the family who own the Chrodden Issa estate. That part of the village which is in the parish of Amlwch is all on the Llwydiarth estate, as are also the hall, and several farms in the vicinity. The chapelry of Llanerchymedd is attached to the rectory of Llanbenlan, in the presentation of the Bishop of Bangor, the parson of which receives the rents of the glebe lands in and near the vill of Llanerchymedd, appoints the curate, and pays his salary. The emoluments of the curate arise partly from his salary, and partly from offerings and oblations, and other payments termed surplice fees. The inhabitants of the vill have no private sitting places in the church; all those on the south side belong to the Chrodden Issa estate; those on the north side belong to the Llwydiarth estate, which is in the parish of Amlwch, and the chief part of the congregation are dwellers on that estate. A proportion of the elements used at the administration of the sacrament at Llanerchymedd church is supplied by Amlwch. The clerk and sexton of Llanerchymedd appear to have been appointed by the Llwydiarth family, *malgré* the minister; his emoluments arise from sweeping the church and washing the surplices, which are not paid by the inhabitants of the vill, and also from offerings and other fees *pertaining to his office*. John Owen, the pauper, was appointed clerk and sexton of Llanerchymedd in March, 1795, and he has executed the office to the present time, dwelling altogether in that part of the village of Llanerchymedd which lies in Amlwch. The pauper's father was settled in the vill of Llanerchymedd. It had been the uniform practice of the minister of Llanerchymedd to attend with his clerk at the houses of the inhabitants of Amlwch, *in the village and its vicinity*, for the purpose of visiting the sick, administering private baptism, and reading a prayer prior to the removal of bodies that were about to be buried at Llanerchymedd church. No limits were assigned as to the distance from the village within which these several services had been performed by the minister and clerk of Llanerchymedd. No marriages of the inhabitants have been solemnized in Llanerchymedd. The witnesses differed in opinion, whether these services rendered to the inhabitants of Amlwch by the minister and clerk were rendered as a matter of right or of indulgence. The sessions were of opinion that the pauper had held an annual office, a part of the duties of which were performed *in the parish of Amlwch*, where he resided, and on that ground quashed the order. *Bayley, J.* "The question is, whether the pauper exercised a public annual office within the parish of Amlwch, within the meaning of the 3 & 4 Will. III. c. 11, s. 6? It enacts, 'That if any

4. Residence.

If part of the duties are performed in the parish it is sufficient.

4. Residence.

person shall execute any public annual office in the parish during one whole year, then he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required.' The legislature considered the executing of an office within the parish to be so notorious, as to form an equivalent to the notice required in other cases. The question is, whether the pauper acquired a settlement by executing the office of clerk and sexton in a part of the parish in which he resided? Now it is not necessary in order to acquire a settlement by serving an office, that the duties of the office should be co-extensive with the parish. If it be notorious to the parish that the office is exercisable within it, that is enough. In *Rex v. St. Mary, Reading* (*ante*, 754), which was the case of a constable, and in *St. Maurice v. St. Mary Kalendar* (*ante*, 754), which was the case of a tithing-man, the duties of the office were performed in several parishes besides those in which the paupers resided. In *Rex v. Fittleworth* (*ante*, 752), a certificate man was elected and sworn a tithing-man for a tithing which did not extend through all the parish of Fittleworth, but comprehended that part of it where he resided; and the court said it was not necessary that the office should extend throughout all the parish; the act only required executing some annual office in the parish. It is sufficient, therefore, to give a settlement in a parish, that the duties of the office served extend into that parish. Then, were the duties of any part of the office of clerk and sexton of the vill and chapelry of Llanerchymedd of right to be performed within the parish of Amlwch? Whether the vill and the chapelry are in point of fact co-extensive does not appear; they are not necessarily so; for Llanerchymedd being an extra-parochial place, the duties of the office of clerk and sexton of the chapelry may be confined and limited to the vill. The founder of a chapel may, by consent of the rector, fix the limits of the chapelry; and it was matter of evidence, therefore, whether the chapelry extended beyond the vill. Upon that point there was contradictory evidence; but altogether it seems to me that the justices have arrived at the right conclusion, that the duties of the office were of right performed in the parish of Amlwch; and if that be so, the pauper has acquired a settlement by discharging some of the duties of the office within the parish. The rectory of Llanbenlan, to which Llanerchymedd is attached, appoints the curate, and pays his salary; but the owner of the Llwydiarth estate appoints the clerk, and repairs the chapel. The chapel is appropriated part to the use of the tenants of the Llwydiarth estate, and part to the use of the tenants of another estate. The inhabitants of the vill have no seats. It has been the uniform practice of the minister of Llanerchymedd occasionally to attend with his clerk at the houses of the inhabitants of Amlwch; whether as matter of duty or of indulgence was left in doubt; but in my opinion the sessions have done right in concluding that it was done as matter of obligation. Then was not this a description of office notorious in the parish of Amlwch? The fact of the parish having supplied a portion of the sacramental elements, is a very clear circumstance to show its notoriety. Part of the charges made by the parish officers of Amlwch in their accounts must have been for bread and wine supplied to the chapel of Llanerchymedd, and that affords a strong argument that the chapel was erected for the benefit of the parish as well as of the vill." *Holroyd and Littledale, Js.* concurred. Order of sessions confirmed.

To gain a settlement by office, the party must reside in the parish where it is executed.

Rex v. Woodbridge, 1 Nev. & M. 457; 4 B. & Ad. 711. Appeal against an order whereby Joseph Bird was removed from St. Matthew to Woodbridge. Order confirmed. Case:—The pauper was on the 29th of September, 1820, appointed by the bailiffs of Ipswich a crane porter at the common quay in that town. The business of the crane porters is to unload vessels arriving at the common quay, it is a public annual office and the pauper served it for a year. The quay where the vessels are unloaded is situated in the parish of St. Mary at the quay at Ipswich, but during the whole of the year the pauper resided in the parish of St. Matthew in the same town; and the sessions, thinking the office was executed in the parish of St. Mary at the quay, were of opinion that no settlement was gained in St. Matthew's. If the court should be of

the same opinion the order of sessions was to be confirmed, if of the contrary opinion the order to be quashed. *Denman, C. J.* "The words of the statute are sufficiently explicit to show that a settlement can be gained only by serving an office in the parish where the party resides. The order of sessions must be confirmed." Order of sessions confirmed.

Rex v. St. Nicholas, Hereford, 10 Bar. & Cres. 832. Removal of S. Hall, widow, and her children from St. Peter to St. Nicholas, both in the county of Hereford. Order confirmed. Case: T. Hall, deceased, the husband of S. Hall, the pauper, gained a legal settlement in the parish of St. Nicholas, Hereford, by renting a tenement. He quitted that house 23d of November, 1827, and lived in the parish of All Saints, Hereford, till the 23d of June, 1828, when he removed to St. Peter, Hereford, and resided in that parish till the time of his death, 29th of December, 1828. On Monday the 2d of October, 1826, he was appointed by the corporation of Hereford to the annual public office of town crier and bellman for the city of Hereford, and also sworn in a constable of the city of Hereford. He was re-appointed and re-sworn on the 1st of October, 1827, and 16th of October, 1828, and he executed the office of town crier and bellman in the city of Hereford, of which the parish of St. Peter forms a part, from the time of his first appointment on the 2d of October, 1826, up to the time of his death, 29th of December, 1828; he was also liable and ready to execute the office of constable when called on, but never had acted as constable. There were other persons sworn in as constables, who acted as such in the city. T. Hall resided forty days and upwards, namely, from the 23d of June, 1828, to the 29th of December, 1828, in the parish of St. Peter's, Hereford. The question for the opinion of this court was, whether the residence of T. Hall in St. Peter's parish for forty days and upwards (while executing the annual public office of crier and bellman in all the parishes in the city of Hereford, namely, from the 23d of June, 1828, to 29th of December, 1828), was sufficient to gain a settlement? if it be, his widow, S. Hall, and family, have gained a settlement in St. Peter's parish; but if that residence be not sufficient, their settlement is in St. Nicholas's parish. Lord *Tenterden, C. J.* now delivered the judgment of the court; and, after stating the facts of the case, proceeded as follows: "We are of opinion that the pauper did gain a settlement in the parish of St. Peter's, Hereford. The question turns entirely on the statute 3 W. & M. c. 11, s. 6, which enacts, 'that if any person who shall come to inhabit in any town or parish during one whole year, shall on his own account execute any public office in the town or parish during one whole year, then he shall be judged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required.' Now, the office of crier is undoubtedly an office within the meaning of the statute; it need not be confined to a particular parish; but an office in a city containing several parishes will confer a settlement. By the statute 13 & 14 Car. II. c. 12, a party coming into a parish to settle gained a settlement by forty days' residence. The statute 1 Jac. II. c. 17, s. 3, enacted, 'that the forty days' continuance in the parish intended by the former statute to make a settlement, should be accounted from the delivery of a notice in writing of the house of abode, &c. to the churchwarden or overseer of the poor.' The effect of that statute, therefore, was, to prevent a party gaining a settlement until forty days after the delivery of the notice required to the parish officers. Now, the statute 3 & 4 W. & M. c. 11, after enacting that the forty days shall be accounted from the publication in the church of the notice in writing required to be delivered to the parish officers, substitutes the executing of a public annual office for the notice required in the case of coming to settle upon a tenement; and as in that case a party would be settled in a parish by residing therein forty days after the publication of the notice, by analogy he will gain a settlement by the execution of a public annual office during a year, in any parish where he has last resided for forty days. Here the husband of the pauper did execute a public annual office in the town or parish during one whole year. He comes, therefore, within the very words of the section, and it is a safe rule of construction to adhere to the words of a

4. *Residence.*

The office of town crier and bellman will confer a settlement under s. 6 of 3 W. & M. c. 11, and if the town comprises several parishes the settlement will be where the officer has last resided forty days.

4. Residence.

statute. The seventh section throws some light on the subject. It enacts, 'that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be deemed a good settlement therein, though no notice in writing be delivered and published.' Now, although the subsequent statute 8 & 9 Will. III. requires that there shall be a service as well as a hiring for a year, yet, it is clear that a party will gain a settlement by a year's service under a yearly hiring in that parish wherein he has resided for the last forty days; and it is immaterial, in that case, whether the party be hired before or after he comes into the parish. By analogy to the case of hiring and service, it appears to us that the husband of the pauper having been appointed to the office before he came to reside in the parish; and having served that office for one whole year for this as well as for the other parishes of that town, and having resided there for the last forty days during which he executed the office, gained a settlement in the parish of St. Peter's, Hereford. The order of sessions must, therefore, be quashed." Order of sessions quashed.

10. *Of Settlement by being Charged with and Paying Parish Taxes or Levies.*

10. *Of Settlement by being Charged with and Paying Parish Taxes or Levies.*

By the 3 Will. III. c. 11, s. 6, a person might gain a settlement by being charged with and paying his share towards the *public taxes and levies of the town or parish*. But by the 35 Geo. III. c. 101, s. 4, it was provided that the person must pay such parochial taxes or levies in respect of a tenement of the yearly value of 10*l.* or upwards. The effect of which statute was that this mode of acquiring a settlement was seldom relied on, for in most instances where the tenement was of the yearly value of 10*l.*, the occupier could obtain a settlement on other grounds. This was the state of the law from 1795, when the 35 Geo. III. c. 101, was passed, down to 22d June, 1819, the date of the 59 Geo. III. c. 50, by which latter statute this mode of establishing a settlement was revived, as the latter statute required that in order to gain a settlement by *renting* a tenement, such tenement must be *bonâ fide* hired for one whole year at 10*l.* a year, and the rent for a year actually paid. But although the means of acquiring that kind of settlement were thus narrowed, the statute did not affect the right of acquiring a settlement by *payment of parish taxes, &c.* as it previously existed, and consequently if a person paid parish rates, &c. in respect of a tenement of 10*l.* yearly value, whether he had complied with the provisions of 59 Geo. III. or not, it was immaterial, for he was still entitled to his settlement as being charged with and paying public taxes or levies of the parish.

Such the state of the law continued until the 22d June, 1825, when the 6 Geo. IV. c. 57, annexed the same conditions to acquisition of a settlement by paying rates as it imposed upon settlements by *renting* a tenement, and thereby virtually abolished this branch of settlement. (See *Rex v. Penryn*, 1 Nev. & M. 74; 4 B. & Ad. 224; *post*, 761.)

The 4 & 5 Will. IV. c. 76, however *has added*, as a condition to the acquisition of a *settlement by renting a tenement*, that the occupier shall be assessed to the poor rate, and shall have paid the same for one year. Sect. 66.

Before the 35 Geo. III. c. 101, the annual value of the tenement in respect of which the taxes or levies were charged and paid, was immaterial; and this statute first required that the tenement for which the person was rated should be of the value of 10*l.* a year at the least.

This head of settlement may be considered under the following titles :

1. *Enactments as to this Settlement.*
2. *Construction and Operation of 35 Geo. III. c. 101.*
3. *Of Inhabitaney.*
4. *What are Parochial Taxes or Levies within the Act.*
5. *The Person must be CHARGED and PAY such Tax.*

1. ENACTMENTS AS TO THIS SETTLEMENT.

1. Enactments as to this Settlement.

The 3 Will. III. c. 11, s. 6, enacts, "That if any person who shall come to inhabit in any town or parish, shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required." (See *Rex v. Lower Heyford*, 1 B. & Ad. 75; *post*, 762.)

Settlement by being charged with and paying public taxes and levies of parish.

By 9 & 10 Will. III. c. 11, it is enacted, "That no person or persons whomsoever, who shall come into any parish by any such certificate as aforesaid shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of 10*l.*, or shall execute some annual office in such parish, being legally placed in such office."

But by 35 Geo. III. c. 101, s. 4, "No person after 22d June, 1795, who shall come into any parish, township, or place, shall gain any settlement therein by being charged with and paying his share towards the public taxes or levies of such place, for and on account or in respect of any tenement not being of the yearly value of 10*l.* (a) (See *Rex v. Lower Heyford*, 1 B. & Ad. 75; *post*, 762.)

But not if tenement under 10*l.* per annum.

By 43 Geo. III. c. 161, s. 59, it is enacted, "That the payment of any of the duties made payable by this act (*viz.* the *assessed taxes*), by any person or persons in any parish or place shall not entitle the person or persons so paying such duties to a settlement in such parish or place."

Payment of duties shall not confer a settlement.

By 6 Geo. IV. c. 57, s. 2, it is enacted, "That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying (b) *parochial rates* for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house or building or land shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least; provided always that it shall not be necessary to prove the actual value of such tenement; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary, notwithstanding."

The tenement must have been hired and occupied for a year.

By 4 & 5 Will. IV. c. 76, s. 66, it is enacted, "That from and after the passing of this act no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and shall have paid the same in respect of such tenement for one year."

Proviso.

No settlement by renting tenement without paying poor rate.

2. CONSTRUCTION AND OPERATION OF 35 GEO. III. c. 101.

2. Construction and Operation of 35 Geo. 3, c. 101.

Rex v. St. Pancras, 2 B. & C. 122; 3 D. & R. 343; 2 D. & R. Mag. Ca. 28. Removal of Kitty, wife of William Buchan, from Lambeth to St. Pancras, Middlesex. Order confirmed. Case:—The husband occupied a house in Thornhaugh Street, in St. Pancras, and resided in the same not exceeding nine months, and subsequent to the 2d of July, 1819, at the yearly rent and value of 80*l.*; and during such occupation her husband was re-

A settlement may be gained by being rated and paying parochial taxes in respect of a tenement, being above the annual value of 10*l.*

(a) In the *Ilchester case*, 2 Peck, 251, the committee determined that the 35 Geo. III. did not affect the case of an assessment in respect of *stock in trade* for which parish taxes are paid, however small the amount; but a settlement was thereby gained under 3 Will. III. c. 11.

to the passing of this act, upon a tenement worth more than 10*l.* a year, by a party charged to and having paid parochial rates, will not confer a settlement unless all the forty days are subsequent to such payment. (*Rex v. Ringstead*, 1 M. & R. 448; 7 B. & C. 607, S. C.)

(b) A residence of forty days previous

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and
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A settlement
might have been
acquired under
35 Geo. 3, by
payment of
rates.

gularly rated by and paid a poor rate to the parish of St. Pancras, as occupier of the house. *Bayley, J.* "The question in this case is, whether the right to a settlement by being rated and paying taxes, was still a subsisting right at the time when the pauper was rated and paid, the tenement which he occupied being of the annual value of 10*l.* or upwards? In this case the pauper could not gain a settlement by renting it, because he had not been in the occupation of it for the period of one whole year, as required by the 59 Geo. III. c. 50. In order to decide the question, we must advert to the 35 Geo. III. c. 101, s. 4, by which it has been contended that this head of settlement was entirely put an end to. It is material to consider what was the law upon this subject before the 35 Geo. III. c. 101, passed. A person rated and paying taxes for a tenement, whatever might be its value, acquired a settlement. The parish in such a case was considered as having adopted him as one of their parishioners. In most instances where the tenement was of the yearly value of 10*l.* the occupier would obtain a settlement upon other grounds. In the course of the argument however one instance was referred to, in which a party occupying such a tenement would not acquire a settlement unless on the ground of paying rates. I allude to the case of a person living in a house belonging to the king, as a servant of the public. The words of the clause to which I have referred do not in terms import an intention of the legislature to abolish this head of settlement entirely. They are qualified and apply expressly to tenements not being of the yearly value of 10*l.* And before we give a general effect to words which are not in themselves general, we ought to see clearly that such was the intention of the legislature. I think that it would be going too far to give a general effect to the words of this act, when we find that being rated and paying, as applied to a tenement of above the annual value of 10*l.* was one medium by which a settlement in all cases might be obtained, and in some instances the only medium. *Rex v. Islington* and *Rex v. Penryn* (a) have been referred to in argument, and are certainly at variance with the opinion of the court. In the former however the point did not arise, and the opinion of Lord *Kenyon* was quite extra-judicial. The real question was, whether the operation of the 35 Geo. III. c. 101, s. 4, was limited to persons who should thereafter come into any parish, or whether it extended to persons residing there before. In *Rex v. Penryn* the question was again presented to the consideration of Lord *Ellenborough*, who certainly gave a distinct opinion that it was the intention of the legislature to abolish entirely this head of settlement. The present lord chief justice merely said 'That it was expedient to do away settlements by paying rates for tenements of very small

(a) *Rex v. Penryn*, 5 M. & Sel. 443. Case:—The pauper occupied four rooms at the yearly rent and of the value of 4*l.*, part of a large dwelling-house of the yearly value of 18*l.* and upwards. The other parts of the dwelling-house were occupied by several other tenants, two of whom also paid 4*l.* a year each for their respective apartments. This dwelling-house had but one outer door and one staircase, and each tenant kept the key of his own apartment. For three years the pauper was rated to the church and poor rates for the whole house, and paid the same, and they were allowed to him out of his rent, except in one instance. He had no concern with or control over the remainder of the house. Lord *Ellenborough*, C. J. "It will be in vain for the legislature to make general enactments, if such enactments are to be explained away, and their opera-

tion defeated by nice distinctions. The 3d section was undoubtedly meant to abrogate this head of settlement, and the authorities upon it, which perhaps had been carried to some degree of absurdity. Lord *Kenyon* appears so to have considered the operation of the act; and I am glad that we have his authority for it. If this construction of Lord *Kenyon* had not been felt to be the correct one, I doubt not that we should have had some observation upon it from the learned reporter with whom the act originated, and which is generally known by his name." *Abbott, J.* "This act prevents the removal of any person before he is actually chargeable. This rendered it expedient to do away with settlements by notice or paying rates, for tenements of very small value." The *Rex v. Islington*, the other case over-ruled, is in 1 *East*, 283.

value.' It does not appear by the report whether my brother *Holroyd* or myself were present. These two authorities naturally drew the attention of the court carefully to consider the words of 35 Geo. III. and the state of the law as it existed before the passing of that act. If there had been no case before that time, in which the occupier of a tenement of 10*l.* annual value would gain a settlement by the payment of rates, and on that ground only then perhaps the words of the statute might be construed to have a general operation, and to annihilate this head of settlement altogether. One instance however has been mentioned, and possibly there may be others where before the statute 35 Geo. III. a settlement could not be acquired at all by the occupier of such a tenement, unless by the payment of rates; and that being so, I think that we are not warranted in saying that these qualified words were intended by the legislature to have a general and unqualified operation, so as to abrogate entirely this head of settlement. It might perhaps be imagined when the 59 Geo. III. c. 50 passed, that this head of settlement no longer existed; and we have avoided delay in giving our opinion, that if such were the notion, the error may be remedied during the present session of parliament." Order of sessions confirmed. (*a*)

Rex v. Penryn, 1 Nev. & M. 74; 4 B. & Ad. 224. Appeal against an order of two justices removing H. Gill, widow, and her three children, from Budock to Penryn. Order confirmed. Case:—In 1815, Henry Gill, the deceased husband of the pauper, took of Edgcome, a tenement consisting of three rooms in the borough of Penryn, at the rent of 6*l.* a year. These rooms originally formed part of a dwelling-house, which before 1815 had been subdivided into five distinct dwelling-houses, of which the three rooms occupied by the pauper formed one. The other houses were occupied by other tenants. It was agreed between Gill and the landlord, that Gill should pay all the rates upon the whole property, the amount to be deducted from his rent.

2. *Construction and Operation.*

Between passing of 35 Geo. 3, c. 101, and 6 Geo. 4, c. 57, a settlement might be gained by reason of a party being charged with and paying his share towards the public taxes or levies of the parish, in respect of a tenement above the value of 10*l.*

(*a*) The sole object of the legislature in passing the 35 Geo. III. c. 101, was to take away the power of removing poor persons likely to become chargeable, and to make them irremovable till actually chargeable. But in doing this it became necessary to guard against certain evils which this change would produce to parishes. For instance, by the old law, a person coming into a parish, and giving a written notice to the overseers, would, if he resided forty days, gain a settlement. The reason of this being, that if likely to be chargeable, the overseers, availing themselves of the knowledge thereby communicated, might remove him. But when the law was altered, and actual substituted for probable chargeability, it would follow that a person very likely to become chargeable might, if he was desirous of doing so, come in and give notice, and in defiance of the overseers, acquire a settlement by only not demanding relief for forty days. In order to remedy this evil, settlement by notice was abolished by section 3. So again, if a person came to settle on a tenement under 10*l.*, he would by the old law be removable if likely to become chargeable; but if he was rated, and paid rates in respect of it for forty days, and was not during that time actually chargeable, he might become settled in the parish, and demand

relief on the forty-first day. For this reason such persons rated in respect of tenements under 10*l.* were prevented by section 4 from gaining settlements by paying rates. Similar reasons may be given for the two remaining enactments in the 5th and 6th sections. The whole may be thus summed up: Wherever the change of the law from probable to actual chargeability, enabled persons who were likely to become chargeable to obtain settlements by preventing the parish officers from removing them for forty days, those settlements were abolished; but where by the law as it stood before the 35 Geo. III. c. 101, such persons were irremovable, that act did not interfere with their cases. See the judgment of *Holroyd, J.*, in *Rex v. Idle*, 4 B. & Ald. 156 (*ante*, 280). Applying this principle to the case here decided, we may conclude that the 35 Geo. III. c. 101, did not prevent settlements by paying rates in respect of tenements above 10*l.*; for to such cases the inconvenience above pointed out did not apply. By 13 & 14 Car. II. persons coming to settle on tenements above 10*l.*, and consequently persons paying rates in respect of such tenements, were irremovable even though likely to become chargeable. Their situation therefore was not altered by 35 Geo. III. c. 101. 2 B. & C. 128, note.

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Operation.*

Gill was accordingly rated to, charged with, and paid the church, poor, and highway rates, for the borough of Penryn between 1815 and 1830, for the whole premises in one entire sum or charge. The aggregate annual value of these premises amounted to 16*l.*, being the rent which the landlord received for the same; but the value of the tenement occupied by Gill was under 10*l.* a year. In pursuance of the agreement with his landlord, Gill when he settled his rent was allowed the amount of the rates which he had from time to time paid. Gill was not answerable for the rent of any of the other tenants, nor had he any connection or controul over them. *Denman, C. J.* "The stat. 3 & 4 W. & M. c. 11, s. 6, enacts, 'that if any person who shall come to inhabit in any parish, shall be charged with and pay his share towards the public taxes or levies of the parish, then he shall be deemed to have a legal settlement in the same, though no such notice in writing be delivered as is thereby before required.' It makes no distinction as to the value of the property in respect of which he is to be charged. It would be too much to say that the intention of the legislature was to give a settlement by rating in those cases only where notice was before required to be given to the parish officers. The judgments which have been relied upon in *Rex v. Islington*, (1 East, 283) and *Rex v. Penryn* (5 M. & Sel. 443, ante, 760), were considered with due respect and attention, and overruled in the case of *Rex v. St. Pancras* (2 B. & C. 122, ante, 759). The order of sessions must be confirmed." *Parke, J.* "I am of the same opinion. There is a time when a point even of sessions law ought to be considered as settled." *Taunton and Patteson, Js.* concurred. Order of sessions confirmed.

Rex v. St. Dunstan's (see this case, ante, 641), 4 B. & C. 686; 7 D. & R. 178. *Abbott, C. J.* "It is contended against the order that, upon the true construction of the stat. 35 Geo. III. c. 101, we ought to hold that no person shall gain a settlement by being charged and paying rates in respect of a tenement of the yearly value of 10*l.*, unless he is actually rated at that sum in the assessment. Whether that was the intention of the legislature may admit of some doubt, but certainly it is not for us to say that such an effect is to be given to the act of parliament, because the expressions used in the statute are, 'that no person shall gain a settlement by being charged with, and paying his share towards the public taxes of the parish, in respect of any tenement, not being of the value of 10*l.*' Then, must not the yearly value be the criterion, and not the sum at which the tenant is actually rated? In this case I think that the fixtures having made the tenement amount to the value of 10*l.*, we must say that the pauper's husband gained a settlement without any regard to the amount of rate, or the value fixed by the parish officers in their assessment. If we were to lay down a different rule of construction, it might happen that a person could gain no settlement by rating, even though it could be proved to demonstration that the tenement was of the yearly value of 20*l.* or any larger amount." *Bayley, J.* "I do not agree with the construction put upon the 35 Geo. III. c. 101, in argument. The legislature has said, 'not being of the value of 10*l.*,' which only shows that the tenement must be of that value. If it had been said, 'not rated to the value of 10*l.*,' I should have acceded to the argument."

Rex v. Lower Heyford, 1 Bar. & Adol. 75. John Garratt and children were removed from Banbury to Lower Heyford. Order confirmed. Case:—John Garratt had been for many years previous to his death the clerk of Mr. Bignell, an attorney. In September, 1818, Mr. Bignell took certain premises in Caulcott in the appellant parish, consisting of a cottage, garden, orchard, and about thirteen acres of land, for a term of seven years, at the yearly rent of 38*l.*, and in 1819, he allowed John Garratt (who up to that time lived at Bicester) to reside at the cottage as being nearer to Middleton, his own residence, and more convenient for business. Garratt accordingly removed to Caulcott with his family, and lived in the cottage, to which three acres of land were attached, and which Garratt occupied for several years, but he never had anything to do with the remainder of the land. Mr. Bignell always paid the entire rent to his landlord, and Garratt paid no rent; neither was any reduction made in his salary; and Mr. Bignell stated

It is not necessary that the person should be rated at ten pounds, rating in respect of a tenement of that annual value is sufficient.

An attorney having a cottage and land near his residence, allowed his clerk to occupy them, that he might the more conveniently attend to the business; and suffered him to hold them rent free, as an augmentation of his salary; the clerk was rated as occupier, but the attorney was sometimes called upon to pay, and

as his reason for this, that Garratt had a large family, and his salary was low, and as an augmentation to it, he, Mr. Bignell, permitted him to occupy the cottage, &c., valued by Mr. Bignell at 20*l.* per annum. Garratt left the premises when required, without receiving any notice to quit. In the books of the appellant parish Garratt was rated as the occupier of the cottage and land, and he paid the rates, although Mr. Bignell was sometimes called upon to pay, and did pay, the entire rate so assessed. The rates, when paid by Garratt, were either repaid to him by Mr. Bignell, or allowed in account. The sessions determined that there was no such renting of a tenement as would confer a settlement, but confirmed the order on the ground that Garratt had been charged with and paid his share towards the public taxes of the parish. Bayley, J., now delivered the judgment of the court: "This case depended on the settlement of John Garratt, the father of the paupers. The facts were these: Garratt was clerk to Mr. Bignell an attorney. Mr. Bignell rented a cottage and about thirteen acres of land in Lower Heyford, and he suffered Garratt to live in the cottage, to which three acres of land were attached, rent free. For this cottage and land Garratt was rated, and he paid the rates; but Mr. Bignell either repaid him or allowed him the money in account. Whether he was rated for the whole thirteen acres, or only for the cottage and the three, does not appear very clearly upon the case; but if what he was rated for was of the yearly value of 10*l.*, which has not been disputed, it is in our view of the case sufficient. Upon these facts two questions appear to have been made at the sessions, one whether he gained a settlement by coming to settle upon a tenement of the yearly value of 10*l.* and the other, whether he gained one by coming to inhabit in the parish, and being charged with and paying his share towards the public taxes and levies of the parish; the sessions thought he gained a settlement by the latter mode, and we think their decision was right. It was decided in *Rex v. St. Pancras* (*ante*, 759,) that the 35 Geo. III. c. 101, s. 4, has not entirely abolished this head of settlement, but that it still remains in force where the premises for which the rates are imposed are of the value of 10*l.* a year. The 3 W. & M. c. 11, upon which this head of settlement depends, prescribes the steps where a settlement shall be obtained by *notice*, and by section 6, provides that if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes or levies of the said parish, he shall be adjudged to have a legal settlement therein, though no notice has been given. The questions, therefore, in this case are, did Garratt come to inhabit in this parish? and was he charged with, and did he pay his share towards the public taxes or levies of this parish? and upon these points there is no doubt. It was never contended that he did not gain a settlement upon these grounds. The grounds upon which it is contended that he did not gain a settlement are, that he was not properly tenant of the cottage and land, though he occupied them, but that he occupied rather as servant to Mr. Bignell; that Mr. Bignell was to be considered as the person rated, though it was in Garratt's name; that there was nothing which could properly be called Garratt's share of the rates; and that, though he paid the rates in the first instance, he was either reimbursed or allowed them in account by Mr. Bignell. It is not necessary for us to decide whether Garratt was properly tenant of this cottage and land (though, as the occupation of this cottage and land was unconnected with, and wholly independent of, the service of Garratt to Bignell, there would be no difficulty in the decision,) but it is not necessary to decide this question; because the settlement in this case depends, not on the coming to settle on a tenement under the 13 & 14 Car. II. c. 12, in which case the relation of landlord and tenant is essential, but on coming to inhabit, and being charged with and paying his share of the public taxes or levies of the parish, under the 3 W. & M. c. 11, s. 6, in which case the relation of landlord and tenant is not necessary; but all that is requisite is, that the parish shall rate the party, so as to show that they are aware that he is in the parish, and that he should pay upon such rating. That the relation of landlord and tenant is not necessary in the latter case, under the 3 W. & M. c. 11, s. 6, is established by *Rex v. Stapleton*. There

2. *Construction and Operation.*

did pay, the rates; and when the clerk paid them, the attorney reimbursed him; Held, that the clerk gained a settlement by paying the public parochial taxes.

The relation of landlord and

2. Construction and Operation.

tenant not necessary for acquiring a settlement by paying rates.

the pauper lived with his mother, and was rated for a house and land she occupied. He occupied nothing in the parish himself, and yet it was decided, that by paying such rate he gained a settlement: for the parish, by rating him, had shown that they knew he was inhabiting within the parish, and had recognized him as an inhabitant, and by making the payment, he had performed that part of the condition the statute imposes upon the person charged, viz. paying his share. It was contended there, as it has been contended here, that as he was not occupier, no part of the rate could be called his share; but that argument was overruled. Now that case is much stronger than this; for there the person rated was not the occupier; here he clearly is." After alluding to the other point, which see *post*, he added, "that Garratt gained a settlement by payment of rates, and confirmed the decision of the sessions."

3. OF INHABITANCY.

3. Of Inhabitancy.

The pauper must inhabit the parish in which he is rated,

Rex v. St. Michael-at-Thorn, in Norwich, 6 T. R. 536. The pauper resided in one, and was assessed to the land-tax in another parish. The two parishes were consolidated by statute, and the poor maintained out of one joint fund. The removal was from a third parish. Lord Kenyon. "Though they were consolidated for that purpose, as between them and strangers each parish continues a separate and distinct parish. Then the stat. 3 & 4 W. & M. (*ante*, 753), says, that any person who shall inhabit in any town or parish, and be charged with and pay his share towards the public taxes of the said town or parish, shall thereby obtain a settlement; but in this case the pauper's husband lived in one parish, and was assessed to the land-tax in another, therefore this does not come within the statute."

and reside forty days after being rated, &c.

Rex v. Ringstead, 7 B. & C. 607; 1 Man. & R. 448. Being charged with and paying parochial taxes, did not, before the statute of 6 Geo. IV. c. 57, s. 2, confer any settlement, until the party charged with and paying the same had resided within the parish forty days after he had been so charged; and since that statute passed, no person can acquire a settlement by reason of renting, or paying parochial taxes for any tenement, unless it be of a certain description; and therefore where a pauper had rented a tenement insufficient to confer a settlement under 6 Geo. IV., and in respect thereof had been rated and paid parochial taxes, but had not resided thereon, after such rating and payment, forty days before the passing of the 6 Geo. IV., it was held that he did not thereby acquire any settlement."

4. What are Parochial Taxes or Levies within this Act.

Not assessed taxes. Land-tax held to be a tax within the act.

4. WHAT ARE PAROCHIAL TAXES OR LEVIES WITHIN THIS ACT.

Payment of the assessed taxes shall not entitle any person to a settlement. See 43 Geo. III. c. 161; sect. 59; *ante*, 759.

Rex v. Bramley, Burr. S. C. 75. John Close, the pauper, inhabited and farmed lands at Armley, for which he was charged and paid two quarterly payments to the land-tax only. By the court: "It hath been a great doubt, whether in this respect the legislature did not mean *parochial* taxes. But this hath been long gotten over; and the land-tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it."

The words "parochial rates," in the 6 Geo. 4, c. 57, applies to the land tax; and is not confined to rates made for the use of the parish, but extends to all levies collected within the parish.

Rex v. East Teignmouth, 1 Bar. & Adol. 244. Appeal against an order of removal of G. White and family from East Teignmouth to Bishopteignton. Order quashed. Case:—The pauper a short time before Lady-day, 1825, hired a mill and some closes of land in the parish of Bishopteignton, at the rent of 30*l.* a year, from the said Lady-day, and occupied the premises, residing thereon, with some intervals, during which he was under arrest, till shortly after Christmas, 1826, when in consequence of his rent being unpaid a negotiation took place between him and his landlord, and he gave up his possession and interest in the property. During his occupancy he was assessed to the parochial and other rates, some of which he paid, and among these one half year's assessment to the land-tax, due on the 12th day of

April, 1826, was paid by him in the month of July following. The question for the opinion of this court was, whether the assessment to the land-tax, and payment thereof, conferred a settlement? *Bayley, J.* "I think that the decision of the court of quarter-sessions was right. I quite agree that where a variety of language is found in several acts of parliament in *pari materia*, *prima facie* the inference is that the legislature had a different meaning, but that does not of necessity follow. We must look not only at the words of the statute, but to the cause of making it, to ascertain the intent; '*qui hæret in litera hæret in cortice.*' The words of the statute 3 W. & M. c. 11, s. 6, so far as respects this question, are 'that if any person shall be charged with and pay his share towards the public taxes or levies of the said parish, he shall be adjudged to have a legal settlement in the same.' The 35 Geo. III. c. 101, with the accuracy which might be expected from the framer of that act, adopts the words of the 3 W. & M. and enacts, 'that no person who shall come into any parish shall gain a settlement in such parish by being charged with and paying his share *towards the public taxes or levies of the said parish* for or in respect of any tenement not being of the yearly value of 10*l.*' A question had arisen previous to *Rex v. Bramley* (*Burr. S. C.* 75, *ante*, 764), which was under the statute 3 W. & M. c. 11, s. 6, whether the land-tax was a public tax and levy of the parish. It was said not to be a parochial tax; and it was not so in one sense, because when raised it was not applicable to a parochial purpose; but it was held to be one of the public levies and taxes of the parish, and that construction has been put on the act in several cases. Then, if a settlement might be obtained before the passing of the statute 6 Geo. IV. c. 57, by paying public taxes of the parish, are not such taxes '*parochial?*' within the meaning of that statute, taking the word in a large sense. The argument is, that the words 'parochial taxes' in the latter statute import taxes raised for parish purposes. But that is not of necessity the meaning of the words 'parochial taxes.' They may mean taxes of the parish; and if they may have two meanings, the question is, in what sense they were used in the statute 6 Geo. IV. c. 57? The title of the act is 'An Act for the amendment of the law respecting the settlement of the poor as far as regards renting tenements and paying *parochial taxes.*' Now these latter words undoubtedly mean taxes of the parish, by the payment of which a settlement might be gained by virtue of the statute 3 W. & M. It then recites, 'that the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid *parochial rates.*' It is conceded there is no distinction between the words 'rates' and 'taxes.' The recital therefore refers to the annual value of tenements, in respect of which settlements might have been gained by virtue of the statute of 3 W. & M. by payment of public taxes or the rates of the parish. The statute proceeds to enact, 'that no person shall acquire a settlement by paying parochial rates,' &c. There is undoubtedly a confusion of language; but we may collect from the title and preamble, that it was intended to use the words 'rates' and 'taxes' as synonymous, and the word 'parochial' in the general large sense, 'of the parish.' There is nothing to show that a different sense was intended. If this be so, it concludes the present question; because the land-tax has been decided to be a tax of the parish. I think then the words 'parochial rates' in the 6 Geo. IV. c. 57, are not to be confined in construction to rates or taxes raised for the purposes of the parish, but that they are to be construed in the same sense as the words 'taxes of the parish' in the 3 W. & M. c. 11, s. 6, and 35 Geo. III. c. 101, s. 4, and therefore that they import taxes raised within the parish. That being so, then that statute prevents the gaining of a settlement by reason of any person being assessed to and having paid parochial taxes, unless the rent has been paid for the term of one whole year. Here that condition has not been complied with, and consequently no settlement has been gained." *Littledale, J.* "I am of opinion that, construing the word 'parochial' in a large sense, the land-tax is a parochial rate within the meaning of the act of parliament. In common parlance the word 'taxes' is used to denote taxes raised for the general pur-

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poses of the state; the word 'rate,' to denote taxes raised for local purposes. But generally speaking, a rate is a levy; and a parochial rate is a levy raised within the district called a 'parish,' though it be applicable to the general purposes of the state. That being the general meaning of the term, there is no ground for saying that it was intended to be used in any other sense in the statute 6 Geo. IV. c. 57; and if not, then no settlement was gained by the payment of the land-tax; it was the payment of a parochial rate, and the requisites of the statute 6 Geo. IV. c. 57, had not been complied with by occupying and paying the rent of the tenement during one whole year." *Parke, J.* "The question turns entirely on the construction to be put on the statute 6 Geo. IV. c. 57, s. 2, by which it is enacted, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying *parochial rates* for any tenement, &c. unless such tenement shall consist,' &c. If the words 'parochial rate' are to be understood of any tax levied within the parish, then a settlement was gained, because the act does not apply. But if it be understood as applicable strictly to a tax raised for the purposes of the parish, then no settlement was gained. Now it is a good rule of construction to interpret the words of an act of parliament in their ordinary grammatical sense, unless it appear clearly from the context that the legislature used them in some other. Here, by looking at the title of the act and the mischief recited, and by comparing the title and the recital with the body of the act, it is manifest that the legislature meant to use the words 'parochial rates' in the sense of rates or taxes raised within the parish. The title of the act is, "An Act for the amendment of the law respecting the settlement of the poor, as far as regards renting tenements and paying *parochial taxes*.' Now before this statute a settlement might be gained by the payment of taxes raised within the parish. The word 'parochial' clearly applied to that term. The mischief recited is, 'that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation.' I conclude therefore from the preamble, that the parochial rates therein mentioned were intended to include all parochial rates or taxes comprehended in the 3 W. & M. c. 11, s. 6, and that the legislature meant to prevent all discussion and litigation relating to questions of settlement depending upon the payment of such parochial taxes. The land-tax was one of those taxes; consequently, since the statute 6 Geo. IV. c. 57, no settlement can be gained by the payment of that tax in respect of any tenement, unless all things required by that statute be done." Order of sessions confirmed.

In *Rex v. Axmouth* (post, 772), it was contended, that since the land-tax redemption acts, (38 Geo. III. c. 60, *sed vide* 42 Geo. III. c. 116, vol. iii.) which perpetuate the tax on lands as a charge upon the lands in the parish, and leave the tax on salaries as a mere personal tax; the rating in respect of the latter no longer satisfied the words of 3 Will. III. c. 11. But the court immediately over-ruled it, stating, that the tax was still a public tax, leviable and collected within the parish. (See 43 Geo. III. c. 161, sect. 59, *ante*, 759.)

Payment of a
watch rate in one
of the city wards
does not gain a
settlement.

Rex v. Christ Church, London, 8 B. & C. 660. S. C. nom. *Rex v. St. Anne's, Blackfriars*, 3 Man. & R. 383. Order of removal of Sophia, wife of John Gyles, who was absent from her, from St. Anne, Blackfriars, to Christ Church, confirmed. Case:—John occupied part of a house in Christ Church, of the yearly value of 20*l.*, for several months in 1821, and during that time was rated to and paid two quarters' watch-rates for the ward of Farringdon. The city is divided into twenty-six wards, and the ward of Farringdon into seventeen precincts; the house of John, with regard to ward matters, is in St. Ewin's, and not in Christ Church precinct. The watch-rate is made by the alderman and common councilmen of each ward, under 10 Geo. II. c. 22, which enables the mayor, aldermen, and commons of the city to determine what sum [shall be raised for watching, and directs the alderman and councilmen of each ward to make an assessment upon every person who shall inhabit or hold any land in the ward. The rate is collected

by the beadle of the ward. *Bayley, J.* "The *land-tax* was holden to be within the act, from the notice of inhabitancy that arises by the party having been assessed and paid it. Payment towards a *county bridge* gives no settlement, because a person pays as an inhabitant of the county, and not of the parish. This watch-rate is not a parochial tax, nor is it collected by any officer belonging to the parish: the parish had no notice that the party who paid the watch-rate was an inhabitant of the parish: no settlement therefore was gained." Order of sessions quashed.

By 9 Geo. I. c. 7, s. 6, no person who shall be assessed to the *scavenger's* rate, or to the repairs of the *highways*, and shall duly pay the same, shall be deemed to be settled thereby.

T. 9 An. Set. & Rem. 1. Paying to a *county bridge* gains no settlement, for there all the county is liable, and the payment is made as one of the county, and not as an inhabitant of the parish or town where the person resides. And see the judgment of *Bayley, J. supra.*

But as the 12 Geo. II. c. 29, charges a sum certain upon every *division* in proportion to their poor-rate, towards the repair of bridges and other county expenses, and (with respect to bridges) is charged by the justices upon every individual, the case may be altered since that act was passed, under which it may be considered a parish rate or tax. And there is in this case the same notoriety of his inhabitancy as in the case of the poor-rate.

The *church-rate* is a *parish tax*. (*Rex v. St. Bees, 9 East, 203, infra.*)

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Scavengers.

Highways.

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Church rate.

5. THE PERSON MUST BE CHARGED AND PAY SUCH TAX.

Although the rate be from the manner of making it, or from the want of authority in those who assume to make it, not strictly legal, or be void for want of form, or on any other ground, yet if the party be rated, and pay to such a rate, he shall gain a settlement: for it would be hard that one of the parish should come and say, that was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. (19 *Vin. Abr.* 386; *St. Giles's, Cripplegate, v. St. Mary Newington, 2 Nol. P. L.* 126.)

Rex v. Edgbaston, 6 T. R. 540. A person's name was inserted in a rate after payment, and after it was so introduced, he always refused to pay. He gained no settlement.

Rex v. St. Bees, 9 East, 203. Removal of Sarah Tidyman from Egremont to St. Bees, confirmed. Case:—The pauper's husband occupied a house in Egremont till his death. A year after they occupied the house, a churchwarden called at the house for an assessment (generally called in the parish a *couple sess*, but which the pauper understood to be a *church cess*), and told her that her husband was assessed, and she paid 1s. 2d. as the sum assessed. Some time afterwards she paid 1s. more, upon a similar demand made by another churchwarden. And afterwards another shilling was paid, and the assessment was as follows:—

"1791. An assessment upon the householders in the parish of Egremont, at 1s. per couple, for the ornaments and repairs of the parish church;

" × John Tidyman..... s. d. 1 0

"We whose names are hereunto subscribed (being of the church vestry), do allow of this as a regular assessment; as witness our hands, the 28th of March, 1791." (Signed by the minister and eight other persons, including the two churchwardens.)

The mark × opposite Tidyman's name denoted that he had paid the assessment. It appeared from the churchwarden's accounts of that year entered in the vestry book, that the sums received under that assessment were in part laid out in the repairs and ornaments of the church, and the rest in payment of a debt due to the preceding overseers. But that assessment being insufficient, another was made in the same year in aid of it, upon the landholders of the parish who were never assessed but when the assessment upon the householders proved insufficient. And it was frequently the practice for the

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must be Charged
and Pay such
Tax.

Payment of the
sum assessed is
sufficient, though
the rate be in-
formal.

Not so, if the
name be inserted
after the rate is
paid.

A rate too nar-
rowly made is
good for the pur-
poses of settle-
ment.

5. *Must be Charged and Pay such Tax.*

select vestry of the parish to make out these assessments in the form of a list of the names of the inhabitants liable to pay; charging the householders at 1s. each, and the widowers and widows, householders, at 6d. each; which assessments were afterwards submitted to and approved by the general parish vestry. It was contended that the rate was clearly bad, as being made upon the householders only, and not upon the parishioners at large. Lord *Ellenborough*, C. J. "The settlement is given by 3 Will. III. c. 11, to any person inhabiting any town or parish, who shall be charged and pay his share towards the public taxes or levies of the town or parish. Now if a public tax be laid too narrowly, is it less a public tax on that account? This was a *tax*, and it was *public*, and it was *charged* and *paid* within the parish. What else was required to meet the act of parliament?" Order of sessions quashed.

Omission of the sum assessed immaterial, if the amount can be ascertained from the rate.

Tender of repayment.

Rex v. Corhampton, Doug. 621. The overseers made a rate for 2s. in the pound in this form, "Rent 4l. Q. C. Occupier Richard Goodiff. Sum assessed ———." The overseers demanded 8s. for the rate, declaring he was assessed in that sum for the relief of the poor. Goodiff objected, alleging that he was not a parishioner. The overseers opened the rate book, and showed him his name therein, and threatened to distrain for the 8s. if he did not pay it. Goodiff on this paid the money directly. In the afternoon of the same day, the overseer returned with the vestry clerk, and offered to return the money, saying he had taken it by mistake. Goodiff refused to receive it. The overseer however left it, and went away; on which Goodiff threw the money after him. It was contended that the parish never intended to rate him. The mistake of the overseer (and corrected so soon), in supposing him rated when he was not, could not be binding upon the parish. By Lord *Mansfield*, C. J. "There is no question in the case. The title of the rate is, 2s. in the pound; and in the column of rent, Goodiff's rent is 4l. This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides he has paid it, and against his will; and the overseer shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Rex v. Warblington* (*Burr*, S. C. 245), was different from this. The payment there was not till a year after it should have been made, and the overseer was induced to receive it by misrepresentation."

The person paying must be the person rated.

Solon Tongham v. Worplesdon, Fol. 128. The landlord was rated to the poor for the tenement, as being in his hands, and the tenant paid part of the rate. By the court: "The tenant doth not gain a settlement, unless he be both rated and pay."

Same point.

Kinfare v. Kingswinford, Fol. 129. The pauper rented a tenement and paid all parochial taxes for the same for three years in his own right, but was not rated in the parish books; but the name of Richard Coates, who rented the tenement before the pauper, was kept in the levy books. By the court: "This was no settlement."

Same point.

Rex v. Sarratt, *Burr*. S. C. 73. The landlord, who never occupied the house, was charged to the poor rate; but the tenant on demand of the overseers paid it. Lord *Hardwicke*, C. J. "The act requires both a charge and payment; and here is only a charge without a payment. The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay."

Same point.

Rex v. Bramshaw, *Burr*. S. C. 98. The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant on demand of the landlord paid the rate. By the court: "It is a settled point, that a person must be rated as well as pay."

Same point.

Rex v. Lower Walton, *Burr*. S. C. 100. The father was rated, and the son who occupied the tenement paid the rate. By the court: "He must both be rated and pay in order to gain a settlement."

Rex v. Heckmondwicke, Doug. 564. The mother occupied the house, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, knowing at the same time that she was dead. By Lord *Mans-*

field, C. J. "There must be such a rating and paying, as to show manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and could be on nobody else. This (he said) was determined in *Rex v. Walsall* (*infra*), where a settlement was gained.

Rex v. Brightman, 8 Mod. 38; 2 Burr. 1062. Where a man lived in a place called Hoscoe's tenement, and paid taxes there by the name of the occupier of Hoscoe's; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. (S. P. 2 Salk. 478.)

Rex v. Painswick, Burr. S. C. 465. The pauper, Isaac Moorman, took a house in Cirencester, of Thomas Clifford, and agreed to pay the land-tax, and poor-taxes, and all other taxes. The rating was thus: "*Thomas Clifford, or tenant.*" Moorman paid the taxes: and the overseers gave receipts to him in his own name. The landlord lived five miles off. It was urged, that Moorman himself was not rated: being neither expressly named nor even personally hinted at. But the court (Lord Mansfield absent) was clearly of opinion, "that the pauper was sufficiently charged, to notify to Cirencester that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. It was not necessary that he should be expressly named."

Rex v. Walsall, Cald. 35. The pauper, Joseph Dean, took a farm in the borough of Walsall and paid the poor rates in his own right, which were charged in these words, "*Late Lowbridge's house, 2l. 6s. 0d.—1s. 2d.*" Other tenements in the borough were charged in the same manner, after new inhabitants had come into them, who severally paid the rates for them: this tenement had been so charged ever since one Lowbridge left it. By *Aston, J.* and the court (Lord Mansfield, C. J. being absent): "It is agreed that the person must be both rated and pay; and as to the manner *how* he is to be rated, it is clear that his name need not be inserted in the rate. If the parish have sufficient notice of him, it is enough; paying under a rating is equivalent to notice, and the officers have received the rate of this man for two or three years, and therefore must have known him; and it is stated that he paid in his own right. He gained a settlement."

Rex v. Llangammarch, 2 T. R. 628. The pauper was removed from Llanwslyd to Llangammarch. Removal confirmed. The pauper, in May, 1778, rented a house and land in Llangammarch, at 5l. per annum. No agreement was then made between the landlord and tenant about payment of the taxes. The house is called Bryn Frwst, or Waynllwyd, and the land is rated to the poor tax by the name of Waynllwyd. The pauper lived one year in the house, but paid no taxes for it. In September, 1778, the landlord informed him that taxes were wanted for his land. The pauper desired the landlord to pay them, and he would repay him the same. In fact, no taxes were ever paid by or demanded from the tenant; but it appeared that the landlord paid the taxes, and that the pauper allowed them. The overseer who received the taxes from the landlord for this land knew nothing of the pauper; nor whether or not he resided at this farm at the time. *Rex v. Painswick* and *Rex v. Walsall* (*supra*) were cited. *Ashhurst, J.* "The circumstance that the overseer did not know the pauper, nor whether he resided at this farm, distinguishes this from the cases cited. The ground of determination in *Rex v. Painswick* was the notoriety of the occupancy. For when Mr. J. *Dennison* thought that rating the house only might be sufficient, he added, 'for the parish could not but know who was the occupier.' That, indeed, is the natural presumption; but we cannot presume against the facts of the case; and here it is expressly stated as a fact, that the overseer knew nothing of the pauper or whether he resided at this farm. The reason why a party gains a settlement by paying taxes, is because it is an admission by the parish that he is an inhabitant. There is no foundation for the distinction which has been taken between the knowledge of the overseer, and that of the parish at large; for the overseers are the trustees for, and transact the business of, the parish, and they ought to know the state and conditions of the inhabitants. And, indeed, if we could presume either way, it would rather be, that the

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The rate must be on the occupier.

It is sufficient if a person is rated as "occupier," without his name.

It is enough if there be a description sufficient to charge the tenant.

There must be a charge upon the tenant, and if the rate be made in any other way than by name, it must appear that the tenant was notoriously such.

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The poor rate is a tax on the occupier.

It may be inferred from the form of rating who is the person rated; and in the case of land-tax, the presumption is (between the public and the tenant), that the occupier is the person rated.

S. P. *Rex v. Lawrence, Winchester, 4 Doug.* 190.

parish even did not know that the pauper resided in his farm." *Buller, J.* "The poor's rate is a tax on the occupier; if the house be rated, it is *prima facie* a rate on the occupier, but it is not conclusive. If the overseer call on the occupier for the rate, and he pays, that shows that he intended he should pay. But here the overseer did not know that he was an inhabitant, and he went to the landlord and received the rate from him." *Grose, J.* concurred.

Rex v. Folkstone, 3 T. R. 505. The rate for the land-tax was as follows:

Sum assessed.	Proprietors.	Occupier.	Houses.	Quarterly payment.
10s. 10d.	H. S.	J. King.		2s. 6d.

The sessions were of opinion that the landlords were the persons intended to be rated. *Lord Kenyon*, "On the rate there is one column of the proprietors, and another of tenants; but the names of the tenants were only inserted in order to show for what property the landlords were rated." *Buller, J.* "Whether the landlord or tenant is rated, is a question of fact which should always be found by the justices."

Rex v. Mitcham, Cald. 276; 4 *Doug.* 226, S. C. John Heard removed from Mitcham to Moredon. Order quashed. Case:—The pauper inhabited for several years a house at Moredon, which he rented of Mr. Gasson, who was also an inhabitant there, at the yearly rent of 5*l.* clear of all taxes, parliamentary and parochial. Whilst he occupied it, an assessment for the land-tax was made on Moredon, the title of which was, "Surrey, &c. an assessment on the *inhabitants* of the parish of Moredon, for raising a sum by a land-tax," &c. in the following form:—

Rent.	Landlord's name	Tenant's name.	£	s.	d.
£5 0 0	Mr. Gasson.	John Heard.	0	9	9½

Heard paid the 9*s.* 9½*d.* to the collector who demanded the same. By *Lord Mansfield, C. J.* "The question is, whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then, in this case, is no charge upon either. The answer to this question must, therefore, be gathered from other circumstances. In the first place, who ought to be charged? Undoubtedly the occupier ought. The landlord, it is true, is the debtor, but the rate is pointed at the occupier. The parish cannot tell who is the landlord, or who has a rent charge. It is upon the occupier that the officer of government takes his remedy; and though the landlord is directed to allow the sum levied out of the rent, the parish have nothing to do with the transactions between landlord and tenant: this is a matter between them; but for the sake of the public, the occupier, the ostensible person, is to be considered as the person first liable. The next consideration is, what does the assessment profess to be? It professes to be an assessment on the *inhabitants*, that is, the occupiers; the landlord may or may not be an inhabitant: the tenant must be. Then, of whom is it demanded? Of the occupier. Who pays it? The occupier. We may, therefore, supply from the circumstances that which is omitted in the rate itself; and intend here, that which was expressed in *Rex v. Carshalton (Burr. S. C.* 809), with which the present decision does not interfere." *Willes, J.* "There are two circumstances which differ this case from that of *Rex v. Carshalton*, viz. the title of the rate, and the manner of making it; (a) and the court were there of opinion, that the landlord was charged upon the face of it. Here, where the expressions fall short, and we cannot, from the instrument itself, collect enough to found our judgment upon, collateral circumstances point out the tenant as the person meant to be charged." Order quashed. (See *Rex v. Endon, Cald.* 374.)

Where the collector gave the receipt in the name of the landlord, in the form "so much assessed on the landlord," the presumption is that the landlord was rated. (*Rex v. St. James's, Bury, 4 Doug.* 200.)

(a) The form of the rate in that case was

Landlords rated.	In whose occupation.
A. B.	F. G.
C. D.	H. I.

Rex v. Coppull, 2 East, 25. Removal from Standish with Langtree to Coppull confirmed. Case:—The respondents proved by the evidence of the pauper, that his father purchased an estate in Coppull and actually paid the parish rates in respect of it; but the respondents did not produce any rates, and had not given notice for the production of any. *Per Lord Kenyon*, C. J. "It is impossible to argue that parol evidence may be given of rates which are not produced, nor any notice proved to produce them, nor any reasonable account given for their non-production. The best evidence was not given which the nature of the case would admit of." Both orders quashed.

5. *Must be Charged and Pay such Tax.*

The rate itself must be produced as evidence of being charged.

Rex v. Bridgewater, 3 T. R. 550. T. Bastard was the occupier of a house, and the assessment for the land-tax was—Landlord, J. W.—Tenant, T. B.—Assessment 6s. 9d. Bastard absconded, and the landlord requested the tax collector to go with him to take a distress for the 6s. 9d., otherwise he should lose the money. They went and saw Bastard's daughter, who pleaded her poverty and said a friend would pay it. She then went with them to Mrs. O. who gave a guinea to the collector, who received thereout the land-tax. The court were clearly of opinion, that it was money paid for his (Bastard's) use, for which an action might be maintained against him. The money was advanced by a friend, in order to protect him from a distress, under which *his goods* would have otherwise been taken.

The payment by another may be equivalent to payment by himself.

Rex v. Openshaw, Burr. S. C. 522; 1 Blac. Rep. 463. James Bowden took a house and two closes at Gorton, and the landlord was to pay all taxes and levies but the window tax. The rating was thus, "Bowden's." The landlord himself for some time paid the taxes; but in the last year the landlord having some disputes with the overseers about his assessments, directed the overseers to call upon his tenant Bowden for a poor-rate and a church-rate, and tell him that his landlord ordered him to pay and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it did not allow it out of the rent till three quarters of a year after he left the estate, (which was six days before the order of removal,) when he repaid the money. By Lord Mansfield, C. J. "Pray, whom was the landlord to pay it for? Clearly, for the tenant: for it is a tenant's tax. The court has nothing to do with their private agreement. And *per tot. Cur.*—The settlement is clearly good." The orders were discharged.

Landlord refunding to the tenant the amount of the tax paid, does not prevent the gaining a settlement.

Rex v. Okehampton, Burr. S. C. 5. A tide-waiter resided in Kenton, and had a salary: he was rated for this salary to the land-tax. It was paid for some time by himself, but repaid to him by the collector of the customs; and afterwards was paid by the collector. The question is, whether he paid his share towards the public taxes and levies of the parish? It was said it was not his own money, but the money of the collector. By Lord Hardwicke, C. J. "Suppose the landlord has agreed to reimburse his tenant, would not the tenant be settled? This collector did not pay it to exonerate the parish, but to better the man's salary." And by the court: "It hath been settled, that the land-tax is a parish tax within the act; and his being taxed for his salary makes no difference."

Nor where the salary of a tide waiter, rated to the land-tax paid by himself, but repaid by the collector. (a)

Rex v. Weobley, 2 East, 68. Removal from Weobley to New Radnor quashed. The pauper resided as an officer of excise in W., and during such residence was rated to the land-tax in that parish for his salary, which was proved by the production of the land-tax assessment; but it appeared by the evidence of the pauper that he never paid such rate himself, or any rate; the same being paid by the collector of excise, and not deducted out of the pauper's salary. Lord Kenyon, C. J. "If the rate had been paid by him through the medium or by the hands of another, that would have been a payment by himself; but here he neither paid it mediately nor immediately. He was not affected by the payment at all. It was not deducted out of his salary, nor was his income diminished by it. I know that the statute in question has been extended by construction much beyond what was apparently intended

An excise officer was rated for his salary, but the rate was always paid by the collector, and no deduction made from the salary: No settlement.

(a) And see *Rex v. Lower Heyford*, 1 Bar. & Adol. 77; *ante*, 762.

5. *Must be Charged and Pay such Tax.*

Salary of a custom-house officer was rated to the land-tax, paid by the pauper, and reimbursed by the collector: This is sufficient.

by the legislature. This being a new case, where the pauper neither in fact paid the rate himself, nor constructively by the hands of his agent, it is better to abide by the letter and true spirit of the act, and to hold that he did not thereby gain a settlement." Order of sessions quashed.

Rex v. Axmouth, 8 East, 383. Removal of Martha Clarke from Axmouth to Lyme Regis quashed. Case:—The pauper's husband, deceased, (J. Clarke) was an officer under the custom-house, stationed at Axmouth with a salary of 50*l.*; he did the duty of the office there, and was charged 8*l.* per annum to the land-tax in respect of his salary of 50*l.* There had been annually an order issued from the treasury, authorizing the commissioners to direct the collectors of the outports to reimburse those officers of the customs whose salaries did not exceed 60*l.* per annum the taxes assessed on such salaries, and paid by them. It most frequently happened that Clarke was unable to pay the tax assessed on him, until he had received the same from the collectors of the customs, and the tax collector of the parish was at such times in the habit of trusting Clarke with a receipt, and the collector of the customs upon having this receipt given him, paid Clarke the sum, and Clarke paid the same to the collector of the parish. Lord *Ellenborough*, C. J. "*Rex v. Okehampton* (*ante*, 771,) is not to be distinguished from the present. The land-tax being a public tax within the 3 W. III. c. 11, the officer was both charged to it, and paid it within the parish, and nothing more was wanting to give him a settlement there. *Rex v. Weobley* (*ante*, 771,) was distinguished from the other cases by Lord *Kenyon*, because there the officer did not pay the tax mediately or immediately; and, as he says afterwards, because the pauper neither in fact paid the rate himself, nor constructively by the hands of his agent. As to his being reimbursed afterwards, all the cases agree that that makes no difference, and that is not contradicted by *Rex v. Weobley*." Order of sessions confirmed.

And in *Rex v. Lower Heyford* (see facts of the case, *ante*, 762), *Bailey*, J. said, "The remaining objection, that Garratt had been reimbursed the rate, is sufficiently answered by *Rex v. Axmouth* (*supra*), which was cited in the argument. There a custom-house officer was rated for his salary to the land tax, and paid the rate, but he always either got the amount from the collector beforehand, or was repaid by him afterwards; and the collector was under orders from the treasury to reimburse the officers of his description. This was adjudged to give the officer a settlement; and Lord *Ellenborough*, in delivering his judgment, said, "As to his being reimbursed afterwards, all the cases agree that that makes no difference." We are therefore of opinion that Garratt is to be considered as having been charged with and paid his share towards the public taxes of Lower Heyford, within the meaning of 3 W. & M. c. 11, s. 6, and that the decision of the sessions was right.

11. *Of Settlement by Acknowledgment, &c.*

Are properly only evidence of a settlement, and not a mode of acquiring the same.

11. *Of Settlement by Acknowledgment; as by Certificate, &c.*

Settlements of this description are rather evidence of a previous settlement than modes of acquiring a settlement, but nevertheless are usually classed under the head of a settlement. (2 *Nolan*, P. L. 134.)

Parishes upon whom the burden of supporting or relieving a pauper is sought to be cast in any particular instance, and who resist the attempt of the removing parish, are regarded by the courts, and are subjected to the same rules of law as individual litigants. If therefore the defendant parish has previously made any practical acknowledgment of the liability against which it is defending itself, such admission or acknowledgment may be given in evidence, and will in some cases be conclusive, and estop the parish from afterwards controverting the fact either as to the party himself, or those who claim settlements through him, unless its effect can be explained away, by showing that the acts which are pressed against the parish, as amounting to an acknowledgment that the pauper was settled with them, were exercised towards him as casual poor, and not from a sense of his having the more permanent right to relief in consequence of a legal settlement in such parish.

As in all other cases, so in this, the admission of the party sought to be charged, of the justice of the claim, is the strongest proof in support of it; and hence it has happened that a notion has prevailed, that a pauper may gain a settlement by the *acknowledgment* of a parish that he is settled there; it is necessary however to bear in mind, that it is no more than *evidence* that the pauper was previously settled there, and is not in itself a means of *acquiring* this right. The parish which has placed itself in such a position is not in all cases absolutely bound thereby, if it can be clearly shown that the burthen ought to be assumed by some other parish.

It is material to consider the *nature* of the acknowledgments which afford this almost irresistible evidence of settlement. They are of three kinds, namely:

1. *By Certificate.*
2. *By Relief.*
3. *By Non-appeal against an Order of Removal.*

1. ACKNOWLEDGMENT OF SETTLEMENT BY CERTIFICATE.

The practice of granting certificates has been in a great measure put an end to by the 35 Geo. III. c. 101, which renders persons irremovable till *actually chargeable*, yet parish officers retain the power (though they were not *nor are compellable* by mandamus, or otherwise, to do so, *Rex v. St. Ives*, 2 Sess. Cas. 153) to certify as heretofore; and *Abbott, C. J.* in *Rex v. Idle*, 2 B. & A. 153 (*ante* 280), recognized the system of granting certificates as still existing, and seems to recommend the continued use of it, observing that "in many cases a labourer who might wish to come into a parish might not be able to obtain employment there, for fear that by so doing he might bring burdens upon the parish. But if he came with a certificate that fear would be removed." And *Bayley, J.*, in the same case, spoke to the like effect upon this subject, and as questions may also arise upon old certificates yet existing, the law upon this head cannot properly be omitted. It may be divided as follows:

1. *Of the Enactments relating to Certificates.*
2. *The Form of Certificate.*
3. *Of the Direction of the Certificate.*
4. *Of the Signature of the Certificate.*
5. *Of the Allowance and Attestation.*
6. *Proof of Certificate.*
7. *Of the Delivery of Certificate.*
8. *Persons Protected by Certificate from Removal.*
9. *To what Individuals a Certificate extends.*
10. *Of the Effect of the Certificate.*
11. *Certificate, how determined.*
12. *Removal of Certificated Persons.*
13. *Of Apprenticeship under Certificates.*

1. *Of the Enactments relating to Certificates.*

By 8 & 9 W. III. c. 30, s. 1, it is enacted, "Forasmuch as many poor persons chargeable to the parish, township, or place where they live, merely for want of work, would in any other place, where sufficient employment is to be had, maintain themselves and families, without being burthensome to any parish, township, or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in handwriting, they are, for the most part, confined to live in their own parishes, townships, or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufacture would employ more hands:" be it therefore enacted, that if any person or persons whatsoever, from and after the 1st May, 1697, shall come into any parish or other place,

1. *Acknowledgment of Settlement by Certificate.*

1. *Acknowledgment of Settlement by Certificate.*

Of granting certificates.

1. *Enactments, relating to Certificates.*

Persons coming to inhabit in any parish, are to bring with them a certificate under the hands of the churchwardens, &c., of the parish to which they belong. Explained by 9 & 10 W. 3, c. 11, and 12 Anne, stat. 1, c. 18, s. 2. Such witnesses to swear to the execution of certifi-

1. *Acknowledgment of Settlement by Certificate.*

cates, &c., by 3
Geo. 2, c. 29, s. 8.

Not to be removed
before actually
chargeable.

No certificated
person to have a
settlement in any
parish, unless he
rent a tenement of
ten pounds per
annum, or execute
some parish office.

Person bound
apprentice, or
being a hired
servant, to one
who came into a
parish by certi-
ficate, shall not
gain a settlement.

Witness to cer-
tificates of settle-
ments to swear
that they saw the
churchwardens,
&c., sign them.

there to inhabit and reside, shall at the same time procure, bring and deliver to the churchwardens or overseers of the poor of the parish, or place where any such person shall come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place, where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; *and then, and not before*, it shall and may be lawful for any such person, and his or their children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the parish or place from whence such certificate was brought.

By 9 & 10 W. III. c. 11, reciting 8 & 9 W. III. c. 30, s. 1, and whereas some doubts have arisen upon construction of the said act, by what acts any person coming to inhabit or reside within any parish, by virtue of any such certificate as aforesaid, may procure a legal settlement in such parish, and whether such certificate did not amount to a notice in writing, in order to gain a settlement; for explaining thereof and of the said act, be it therefore enacted, "That no person or persons whatsoever, who shall come into any parish, by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the [(a) yearly] value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

By 12 Anne, st. 1, c. 18, s. 2, after reciting 8 & 9 W. III. c. 30, it is enacted, "That if any person whatsoever, who, upon or after 24th June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of June, 1713, be a hired servant to or with any person whatsoever, who did come into, *or shall reside in*, (b) any parish, township, or place, in that part of Great Britain, called England, by means or license of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant, by being hired by, or serving as a servant as aforesaid to such person, shall not gain, or be adjudged to have, any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants to such person as aforesaid, any act or acts of parliament to the contrary notwithstanding."

3 Geo. II. c. 29, s. 8. To prevent disputes which often happen, touching the proof of certificates given by the officers of any parish or place, acknowledging any person or persons therein named to be an inhabitant or inhabitants legally settled in such parish, town, or place, by virtue of an act of parliament made in the eighth and ninth years of the reign of his late

(a) It is singular that this word is omitted by *Cay, Pickering, Ruffhead*, and *Runnington*, the most approved editors of the statutes. See note, *Cald.* 260.

(b) The word *or* is here to be read copulatively, per *Lord Ellenborough*, in *Rex v. Mortlake*, 6 East, 397; post, 790. So that *residence* is essential.

Majesty King William the Third, and for making such certificates more effectual, be it enacted, "That from and after the 24th of June, 1730, the witnesses who attest the execution of such certificates by the churchwarden or churchwardens, overseer or overseers, signing and sealing the same, or one of the said witnesses, shall make oath before the justices of the peace, who by the said act are directed to allow the same (which oath they are hereby authorized to administer), that such witness or witnesses did see the churchwarden or churchwardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper handwriting; which said justices of the peace shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said justices of the peace, shall be taken, deemed, and allowed in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof; and that all certificates given in pursuance to the said act, before the said 24th of June, 1730, shall be also taken and allowed in all courts as evidence, without other proof; provided the same are duly allowed by two justices of the peace, as by the said act is required."

1. *Acknowledgment of Settlement by Certificate.*

Certificate sufficient proof of execution.

By 51 Geo. III. c. 80, s. 1 (see *ante*, 472, title *Apprentice*), all certificates of the settlements of poor persons, executed by two persons only, acting as churchwarden as well as overseer, shall be considered valid.

Certificates signed by two persons only, acting as churchwarden and overseer, to be valid.

54 Geo. III. c. 107 (see *ante*, 473, title *Apprentice*), all certificates of the settlements of poor persons by persons, who, at the time of their executing such certificate of settlement, acted as churchwarden, &c., shall be taken to be valid, as if the same had been executed by persons actually sworn into the office of churchwarden, &c.

Certificates of settlement valid, although churchwardens, &c. not sworn in.

By sect. 2, "all certificates of the settlement of poor persons, executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be taken to be valid, as if the said certificates had been executed by such overseers and the churchwardens of the parish wherein such township, hamlet, chapelry, or place, is situate, or the major part of them."

The statute does not affect prior settlements. Sect. 3.

1 & 2 Geo. IV. c. 32, (*ante*, 479, *Apprentice*), all certificates of the settlement of poor persons which have been, previous to the passing of this act, executed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens for any parish or place in England, for which two had formerly been appointed, shall be taken to be good and effectual."

Certificates of settlement declared valid, when executed by one churchwarden.

2. *The Form of the Certificate and Allowance.*

To the Churchwardens and Overseers of the Poor of the Parish of
County of

in the

2. *The Form of the Certificate and Allowance.*

The form of certificate.

WE the churchwardens and overseers of the poor of the parish of in the county of do hereby certify, own, and acknowledge, that E. F., labourer, is an inhabitant legally settled (a) in our parish of aforesaid. In witness whereof we have hereunto set our hands and seals, the day of in the year of our Lord

Attested by
N. O.
P. Q.

A. B. } Churchwardens. (L. S.)
C. D. } (L. S.)
G. H. } Overseers of the poor. (L. S.)
I. K. } (L. S.)

WE R. S. and T. U. esquires, two of his Majesty's justices of the peace in and

Justices' allowance.

(a) A certificate acknowledging the pauper to be an inhabitant, without using the words "legally settled," has been held sufficient. (*Rex v. Hilpertion*, Burr. S. C. 227.) As to a certificate to undertake to provide for the parties named when requested, see 3 T. R. 48.

1. *Acknowledgment of Settlement by Certificate.*

for the said county of do allow of the above written certificate. And we do also certify that N. O., one of the witnesses who attested the same, hath this day made oath before us, the said justices, that he the said N. O. did see the churchwardens and overseers of the poor of the parish of aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of N. O. and P. Q., who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this day of .

3. *Of the Direction of the Certificate.*

Certificate need not be directed to the parish to which it is delivered.

But a particular parish must be intended.

May be to parish of A., or any other parish in city and county of .

3. *Of the Direction of the Certificate.*

The statute does not require any particular direction; and, therefore, if the certificate is not addressed at all, the omission will not vitiate. In *Rex v. Lillington* (1 East, 438), Lord Kenyon said, "A certificate need not be directed to the particular parish to which it is delivered. But," he added, "a certificate is not a transferable instrument from one parish to another; for then it would operate as a license for vagrancy. That is, after it has performed its office in one parish, it cannot be taken to another for the same purpose; and so from parish to parish as often as the certificated person shall choose to remove himself."

Rex v. Lubbenham, 4 T. R. 251. Lord Kenyon, C. J. said, "There must be a particular parish in contemplation at the time of granting the certificate." (And see *post*, 796.)

Rex v. St. Nicholas, in Harwich, 2 Stra. 1163. The pauper came into St. Nicholas, in Harwich, with a certificate from Woolverstone, addressed to the parish of Harwich, near Dover Court. The sessions were of opinion as there was a mistake in the name of the parish in the address of the certificate, that Harwich could not be obliged to receive the pauper. But it was ruled they were, for it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of Woolverstone, and is conclusive against them for all the world.

A certificate was directed "*To the churchwardens and overseers of the parish of Holy Trinity, or any other parish in the city and county of Coventry,*" this certificate was held to be valid. (*Rex v. Lillington*, 1 East, 438, *supra*.)

4. *Of the Signature and Seals of the Certificate.*

A certificate must be signed by a majority of the churchwardens and overseers.

If signed by one churchwarden and one overseer, where there are four churchwardens and two overseers, it is void.

So if signed by one overseer of a township.

4. *Of the Signature and Seals of the Certificate.*

The 8 & 9 Will. III. c. 30 (*ante*, 773), requires the certificate to be under the hands and seals of the churchwardens and overseers, or the greater part of them; but more recent statutes (see *ante*, 775,) have provided for those cases in which the number of officers in the parish have been deficient.

Rex v. Tamworth, 3 Burr. S. C. 770. A certificate must be signed by a majority of churchwardens and overseers, or it is void. Same point in *Rex v. Margam* (1 T. R. 775).

Rex v. Clifton, 2 East, 168. "The appointment of one overseer alone for a township is bad in law, and a certificate granted by such overseer cannot avail; for, by the statute of Elizabeth, the churchwardens and not less than two substantial householders are required to be nominated overseers. The statute of Will. III. directs that it shall be made by the churchwardens and overseers, or the major part of them; or, where there are no churchwardens, by the overseers; and a certificate, like the present, is not granted by either one or the other of those descriptions of persons. The 13 & 14 Car. II. requires, at least, two persons to be appointed overseers for a township. Therefore, this latter statute requiring two to be appointed, and the statute of Will. III. having required the certificate to be executed by the overseers, where there are no churchwardens, and there having been but one overseer appointed by the township, by whom this certificate was granted, I am of opinion this was void." *Per Grose, J.*

In *Rex v. St. Margaret's, Leicester* (8 East, 332), a certificate signed by two churchwardens, one of whom was sole overseer, was decided to be a nullity. To remedy which inconvenience the 51 Geo. III. c. 80, s. 1, was passed. (For which see *ante*, 775.) And see 54 Geo. III. c. 107, *ante*, 775.

Rex v. Catesby, 2 B. & C. 814; 4 D. & R. 434. Removal of George Cox from Badby to Catesby. Case:—The respondents produced a certificate, dated the 10th of May, in 1761, stating that W. Goodman, the only churchwarden, and E. Webb, the only overseer, of the parish of Catesby, did certify the parish of Badby, that they did acknowledge Thomas Cox to be settled in Catesby.

Bayley, J. "Upon the principle established in several cases it seems to me that this is a good certificate. In *Rex v. Hinckley* (*ante*, 518), Lord *Ellenborough* and *Le Blanc, Js.* both say, 'That if any intendment can by law be made to support an indenture of apprenticeship, the court must make that intendment.' In that case, the indenture was produced on one side, and there was no evidence to impeach it on the other, and *Le Blanc, J.* says, 'The question then is, whether by any intendment of law such an indenture can be good?' And both judges say, it might be considered good 'by intending that there was a custom in the particular parish to have only one churchwarden.' There are two acts of parliament which bear upon this question, and which contain similar language; the 43 Eliz. c. 2, s. 5, which relates to parish apprentices, and the 8 & 9 Will. III. c. 30, which relates to the granting of certificates. Both these acts require that there shall be the concurrence of the churchwardens and overseers, 'or the major part of them,' to give validity to the indentures and certificates respectively, and therefore decisions upon the one throw a light upon the other; and notwithstanding the 17 Geo. II. c. 38, s. 3, which gives to the justices a power of appointing an additional overseer when one shall die in the course of the year, I think that this case is to be considered as it would have been prior to the period when that act passed. Generally speaking, there are two churchwardens in every parish; but, by custom, there may be one only. (a) By law, there must be two overseers originally appointed, and an appointment of less than two is, upon the face of it, bad; but if by custom there may be only one churchwarden appointed, and if there be two overseers duly appointed, death may reduce the number to one, and then the question would be, whether prior to the statute 17 Geo. II. that churchwarden and that overseer might not do the act in question, as constituting the major part of the persons originally appointed. In *Rex v. St. Margaret's, Leicester* (*ante*, 776), there was a very plain and decisive objection to the certificate, because in that case there was only one overseer originally appointed, and it was with reference to that fact, that the language of Lord *Ellenborough* and *Lawrence, J.* there is to be applied. They said that the certificate act, 8 & 9 Will. III. c. 30, requires that a certificate shall be granted under the hands and seals of the churchwardens and overseers of the parish, or the major part of them. It has since been decided in *Rex v. Hinckley* (*ante*, 518), and *Rex v. Earl Shilton* (1 B. & Ald. 275; *ante*, Vol. I.), that though the word in the statute is 'churchwardens,' yet, by custom, if one only be appointed, that one will be sufficient to satisfy the word churchwardens; but it being clear that by law less than two overseers cannot be appointed, there must have been originally two overseers; and in the case of *Rex v. St. Margaret's, Leicester* (*ante*, 776), it was stated as a fact that there was one only. In *Rex v. Clifton* (*ante*, 776), the certificate was stated to be under the hand and seal of J. W., 'only overseer of the poor of the township,' and therefore the court decided, not upon the language of the certificate itself, but upon the fact that originally there had been an appointment of one only. *Rex v. Hinckley* (*ante*, 518), and *Rex v. Earl Shilton* (*ante*, Vol. I.), both establish this proposition, that if a certificate or the binding of a parish apprentice be by one churchwarden and one overseer it is good, and it is only because in this case the certificate describes Edward Webb as 'the only overseer,' that we are at liberty to assume that there was originally a bad appointment. Now let us consider the law of presumption, with reference to that point. Are we to presume that it was *non ritè actum*? The statute says, that the justices are to appoint two overseers. Are we then to presume that the justices have deviated from their duty and appointed one only, or are we not rather to presume that two overseers had been duly ap-

1. *Acknowledgment of Settlement by Certificate.*

A parish certificate, purported to be granted in 1761, by A., the only churchwarden, and B., the only overseer of the parish: Held, that it must be taken to have been a good certificate, because it may be intended in favour of such an instrument, that by custom there was only one churchwarden in the parish, and that two overseers had been originally appointed, but that one of them died, and that the certificate was granted before the vacancy was filled up.

Less than two overseers cannot be appointed.

(a) A custom to have no churchwarden is bad. (*Rex v. Wix*, 2 B. & Ad. 197.)

1. *Acknowledgment of Settlement by Certificate.*

pointed, and that one of them had died? The law will presume that a party has conformed to the law; and if we are to make any presumption, it is *ut res magis valeat quam pereat*. Between these two, I say, that presumption ought to prevail which assumes that the justices have conformed to the law; and therefore I think we ought rather to support the instrument than destroy it. Upon this principle it appears to me we are at liberty to assume that in this case William Goodman was, by the custom of this parish, the only churchwarden appointed; that Edward Webb was the only surviving overseer, that he duly granted the certificate in the character in which he is described upon the face of the instrument, which he would not have done had he not been regularly and duly appointed; and that we are bound to intend, according to the language of Lord *Ellenborough* in *Rex v. Hinckley* (*ante*, 518), that there had been originally a good and valid appointment of two, there being no evidence to show what the appointment was, or to rebut the inference arising from the face of the certificate itself. For these reasons I am of opinion, that, as against the parish which has granted this certificate, we ought to hold that this overseer was duly authorized to do the act in question, and therefore that the order of sessions must be confirmed." *Holroyd, J.* "I think, upon the authorities which have been cited, and likewise upon the principles which ought to govern us, assuming that the authorities did not exist, that this certificate was good in point of law, or at least that the sessions might legally draw the conclusion, and intend from the circumstances which appeared in evidence, that it was a good certificate. The certificate was granted on the 17th May, 1761, by two persons who were at that time to be taken as the only existing parish officers. It is submitted to by the parish to whom the pauper is sent, as a good certificate, and now after a lapse of sixty-three years, it is for the first time called in question. If any intendment or presumption can legally be made in favour of the validity of such an instrument, it must be in a case of this description; and I think that the justices had authority in point of law to presume such facts as would make it a good certificate, assuming such facts to have had existence. That such facts might really exist, there seems no doubt, at least upon the authority of the cases cited. It is perfectly clear, that by custom there may be only one churchwarden in a parish. There must be two overseers appointed in addition to the churchwardens; and then, according to the 43 Eliz. c. 2, such persons shall be called overseers of the poor, and are to take charge of them. Now upon the face of this instrument, I think we are to take it, that the person who is called 'the *only* overseer' of the poor, was, in point of law, the survivor of two; for unless there had been two persons appointed, who, together with the churchwardens, were to be overseers of the poor, the statute of Elizabeth would not have been satisfied. Indeed, the description of himself as 'the *only* overseer' would not be correct, unless there had been two overseers originally appointed, and therefore it is a fair presumption, arising from the face of the certificate, that he was the survivor of two. Suppose an issue had been directed to try simply whether he was or was not the overseer of the parish; if it was shown that there had been only one originally, the issue must have been found that he was not the overseer of the parish, and if the *onus* was to be thrown upon those who are called upon to support the certificate, (even assuming that it had been submitted to for an hundred years,) it could not, by legal intendment, be considered a good certificate. I think, however, that the magistrates were abundantly warranted in presuming, as they have done, that there had been an appointment of two overseers originally, and that if there was by custom only one churchwarden, they had a right to presume the fact in favour of the certificate. If so, then the certificate must be considered as signed by a majority of those who would be the original existing body. Whether it is absolutely necessary for the purpose of executing their functions that the majority of the original existing body should continue to exist or not, is a question which we need not decide, because if that was necessary the 17 Geo. II. would not have been passed, for then in case the original churchwardens and overseers had been reduced below a majority, as for instance, if there were originally four, and they were

reduced to two, all their functions must be at an end during the residue of the year, until that statute had passed. It is, however, unnecessary to decide that question. In this case the sessions have drawn, as they had a right by law to do, the proper conclusion from the presumption of facts, in holding that this was a legal certificate; and as they have done that, I think we should not be justified in reversing their order. But independently of what they have done, I am of opinion, that according to the authorities of *Rex v. Hinckley* (*ante*, 518,) and *Rex v. Earl Shilton*, we are bound by law to make every intendment that can reasonably be made in favour of the certificate. Acting upon the maxim, '*res magis valeat quam pereat*,' we ought to conclude that this certificate has been legally granted by persons who describe themselves as 'the only churchwarden and the only overseer,' which the latter person could not have done with propriety, unless there had been two originally appointed; and inasmuch as there might have been originally only one churchwarden by custom, we must presume, particularly after an acquiescence of sixty-three years, that the person who signed the certificate was a majority of the existing body, and consequently that this was a valid certificate." *Littledale, J.* "I am of the same opinion. A certificate signed by one churchwarden and one overseer alone, would certainly not be sufficient, unless the law would intend something more. But it appears to me, that upon the face of this instrument we are at liberty to intend those circumstances which are necessary to give it validity. First, with respect to the churchwarden, I think there is no difficulty in intending that he was such a churchwarden as the custom of the parish would authorize, inasmuch as by custom there may be only one churchwarden in a parish. Then, secondly, with respect to the overseer, though a certificate signed by one overseer would be bad, still we are at liberty to assume from the language of this certificate, that there were originally two overseers appointed, but that one had died after the appointment, and before the certificate was granted. It is said, we are called upon to intend death instead of the continuance of life. So we are; and I think we are at liberty to do so, until the contrary be shown. But we are placed in the situation of choosing between two intendments, a particular, and a general intendment; first, that a party should be presumed to live, when once shown to be alive; and second, that every thing shall be presumed to be right according to law. Now the question is, which of these two intendments is to prevail? Because it is impossible that both can operate. The intendment that every thing is to be presumed to be right according to law, is a general intendment, and, I think, ought to prevail, especially in a case of this description, until the contrary is shown. In *Rex v. Clifton* (*ante*, 776,) and *Rex v. St. Margaret's, Leicester* (*ante*, 776,) the question of intendment did not arise, because the facts did not warrant it. There the appointment of one overseer was nugatory, being contrary to the statute. But here, after the lapse of sixty-three years, the description of the overseer may warrant us in presuming an original appointment of two overseers, and enable us to intend that one of them had died. *Rex v. Hinckley* (*ante*, 518,) and *Rex v. Earl Shilton* are authorities to warrant the court in saying, that every thing must be presumed to be rightly done, until the contrary is proved. So in *Rex v. Morris* (4 T. R. 550), which was the case of an appointment by justices of one overseer for a hamlet in a particular parish, in which the question was, whether only one overseer could by law be appointed, Lord *Kenyon* says, 'This court has invariably made a distinction between orders of justices and convictions, and said, that every thing is to be intended in support of the former;' and speaking of the objection there as to the supposed illegality of the appointment of one overseer, he said, 'we are not left to conjecture that no other person was appointed overseer of this place, for it appears on the order of sessions that this was an appeal of one of the overseers.' Now when we apply what that learned judge says to the present case, that every thing should be intended in support of the order of justices, I think it will justify our opinion on the present occasion. This certificate is a public document, and though not framed by justices of the peace, yet being the act of the parish officers, the

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The certificates must be under the distinct and several seal of each churchwarden and overseer.

court, for the same reason that it intends every thing in favour of an order of justices, will intend every thing in favour of an instrument made by parish officers. On the whole, therefore, I am of opinion that this is a valid certificate." Order of sessions affirmed.

Ret v. Austrey, 6 M. & Sel. 319. The case is fully stated in the judgment given by Lord *Ellenborough*. In this case an order of removal of J. Smith from St. Margaret's, Leicester, to Austrey, was confirmed, subject to a case. The question now remaining for the opinion of the court, arose upon a certificate, duly attested and allowed by two justices, granted to the pauper, purporting to be the certificate of J. S., J. P., and J. B., churchwardens and overseers of Appleby, acknowledging the pauper to be settled at Appleby. In witness whereof (the certificate stated) we have hereunto set our hands and seals, the 4th of April, 1768. This certificate, the case states, is under the hands of S., P., and B., but there are only *two* seals, one opposite to the names of S., and P., styled churchwardens, and the other opposite the name of B., styled overseer. And the question is, whether this is a good certificate within the 8 & 9 W. III. c. 30? If it is not a good certificate, the order of sessions must be confirmed. The certificate required by sect. 1. is a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them, or under the hands and seals of the overseers of the poor, where there is no churchwarden. The certificate in question being a certificate by the two churchwardens, and by one only of the overseers, and under two seals only, it was objected that it was not a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them. In answer to this, it was contended that if several persons seal and deliver an instrument, by putting their several seals upon one and the same piece of wax or wafer that is put upon the instrument, or using the same as their several seals, and delivering the instrument as their respective deeds, that the seal becomes the several seal of each, and that the instrument becomes the deed of all: and that this reasoning is applicable to the present case as showing, that in law, the seal opposite the names of the two churchwardens, is to be considered as the distinct seal of each, and therefore that the certificate testifying that the three had in witness thereof set their hands and seals thereto, and having been allowed by two justices, and the certificated person having been received under the same, was to be considered in law as being under the hands and seals of the three. In considering how far the cases of deeds are applicable to a case like the present, it is to be recollected that in those cases the parties alone, under whose authority the deeds were executed, are bound by them. But the present is the case of the execution of a power, which binds and operates upon other persons at their peril, and subjects them to indictments as for crimes, in case of their disobedience to the power if it be duly executed. In the execution of powers, all the circumstances required by the creators of the power (however unessential and otherwise unimportant) must be observed, and can only be satisfied by a strictly literal and precise performance. *Hawkins v. Kemp*, (3 East, 440.) It is also a general principle of law, whenever a power is given to particular persons to do any written act in a particular manner, and under certain particular circumstances,—whether it be to parish officers or magistrates to grant certificates, under which, if duly executed, other persons, especially public officers, are bound to act, or to grant warrants, or make orders,—that their authority must appear on the instrument itself. It must thereby appear, that they are the persons authorized, and that the certificate, warrant, or order, was made in the manner and under the circumstances required; otherwise it is not obligatory, but void: the mere statement that the parties, in witness thereof, have put their hands and seals to such an instrument, does not make it so, unless it really have their hands and seals put to it; nor in the execution of a power has it, as it seems to us, their hands and seals to it, so as to make it a good execution of a power requiring such execution to be under their hands and seals, unless it be apparent upon the instrument itself that it has the hand and seal of each put to it. The statute is to be construed, in a case like this, according

A certificate is in the nature of a power.

to common parlance and understanding, and so as to be a security to persons who are bound to obey the powers given by it at their peril, and not to be construed according to what *may* be brought within its words by nice legal reasoning, applicable merely to deeds, and by which construction persons bound to obey the execution of the power, if it be duly granted, cannot ascertain whether it be so or not, without delay, enquiry, expense, and trouble. In *Thaire v. Thaire* (*Palm.* 109, 112), where there was a submission to arbitration, "so that the award be delivered under their hands and seals," it was made a question, whether an award sealed, but not signed, was a good award: the point argued being, whether the sealing, which was virtually a signing, was sufficient; or whether the words of the submission should be intended, in common parlance, an actual writing of their hands? The judges of C. P. were at first divided, but it was finally decided by the whole court, not that a virtual signing would do, but that there ought to be an actual signing under their hands. So, where an act is to be under the hands and seals of the three, a mere virtual sealing by any of the three appears to us not sufficient; but it ought to be under the actual distinct seal of each of the three, that is to say, under a distinct and several sealed impression adopted by each of the three. The necessity and importance of requiring this is still more striking in cases of warrants of imprisonment, (where they are required to be under the hands and seals of two justices of the peace,) where resistance and death might follow, and where the justification or high criminality of the officer or of the party to be apprehended would depend upon the uncertainty, and upon the subsequent establishment by extrinsic proof, whether the seal, if one sealed impression on the warrant would in any case do, was used so as to be considered in law the seal of both or one: the consequence is, we think the certificate is void, and that the order of sessions must be confirmed.

Rex v. Whitchurch, 7 B. & C. 573; 1 M. & R. Mag. Ca. 167. Order of removal of William Bray, &c., from Whitchurch to St. Mary's Bourne, quashed. Case:—A certificate was produced, by which J. Harbutt, W. Piper, W. Arundel, and W. Phillpott, churchwardens and overseers of St. Mary's Bourne, acknowledged W. Bray, jun., and his wife, William, Mary, and Elizabeth, their children, to be inhabitants settled in St. Mary's Bourne. Signed, &c., "In witness whereof we have hereunder set our hands and seals, this 7th day of September, 1758. —, (L. S.), W. Piper, (L. S.), churchwardens; W. Arundell, (L. S.), the mark of W. Phillpott, (L. S.), overseers. Attested by us, T. May, A. Neave." It was directed to Whitchurch, and was duly allowed on the 12th of September, 1758. William Bray, jun., the grandfather of the pauper, resided in Whitchurch till the time of his death, in 1799; William Bray his son, also named in the certificate, had resided there ever since the certificate was granted, and the pauper had resided there from the time of his birth, till the time of this order. It appeared by the visitation books, that St. Mary's Bourne is in the diocese of Winchester, and is a peculiar within the jurisdiction of the chancellor's visitation. Harbutt and Piper were not sworn churchwardens in 1758 till the 15th of September. No churchwardens appeared by the books to have been sworn at the visitation from 1751 to 1758: the visitation book for 1750 was lost. It appeared from the registrar, that it was the course of office to make an entry in the visitation books of the swearing of churchwardens at the time of swearing, whether the swearing takes place at the visitation, or afterwards. If it took place afterwards, the registrar always entered it, but he had not looked over the books before his time to see whether there was any entry of such subsequent swearings. At Easter, 1750, J. Longman was nominated churchwarden. In 1757, T. Cowdey, and E. Maltin were nominated churchwardens, and Harbutt signed the nomination. At Easter in 1758, Thomas Harbutt and William Piper were nominated churchwardens. The pauper was on the 7th day of December, 1790, bound by indenture to his grandfather for seven years, which he served in Whitchurch. The father of the pauper, sixteen or seventeen years ago, received relief from the overseers of St. Mary's Bourne, he at that time residing at Whitchurch. He has also constantly for these last two years received relief from St. Mary's

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A certificate granted in 1758 by four persons, as churchwardens and overseers, was signed by both overseers, and by one churchwarden. The churchwarden was nominated at Easter, and sworn in September, the usual time for swearing churchwardens, and there was no proof of his having been sworn when he signed the certificate. The parish relieved the pauper and his family in another parish, at various times, from 1758 to 1827: Held, first, that the execution by two overseers and one churchwarden, was an execution by the major part of the churchwardens and overseers; and secondly, that after such a lapse of time, the court will presume that the churchwarden was sworn before he signed the certificate.

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Bourne; and no objection was made upon his application for relief, when he required it. The pauper had been occasionally relieved by St. Mary's Bourne, nearly ever since his apprenticeship whenever he wanted it, and has constantly received relief for the last seven or eight years. The sessions thought the certificate inadequately executed. *Bayley, J.* "The certificate, upon the validity of which the question in this case turns, was granted nearly seventy years ago. It contains the names of four persons, whom it describes as churchwardens and overseers of St. Mary's Bourne. It appears by the visitation book, that the churchwardens were sworn into office three days after the allowance of the certificate; therefore it has been contended, that the execution by Piper being an act done before he was sworn, was done without authority, and is not binding upon the parish. Now, though the fact may be, that at the time when he executed this certificate he had not taken the oath of office, still the other parish into which the pauper went, and in which, in consequence of his having the certificate he was suffered to reside, must have been equally imposed upon, and must have been induced to believe that the certificate was genuine, and had been executed by competent officers. If we were bound in point of law to allow this objection, we must do so, notwithstanding the grievous injustice which would result from it, and though one of the consequences would be, that no prudent person would from henceforth receive a certificate, and the object of the statute would be entirely defeated. But as it seems to me it is by no means necessary, in order to render such an act as this binding upon the parish, that the churchwardens shall have been previously sworn. The parish may allow him to act as their officer *de facto*, though there may be another, who is officer *de jure*; and if they do hold him out as churchwarden *de facto*, and suffer him to act in that capacity, they cannot be permitted to practise the fraud of afterwards denying the validity of his acts. At present therefore I am disposed to think that the fact of the churchwardens not having been sworn until after the execution of the certificate, does not vacate it. It is clear, from the statement in the case, that the parish have all along, almost from the year 1758 down to the time when the present order of removal was made, been acting upon the certificate, as good and valid. It is not then, in my opinion, too much for us to presume that it is so: and I think cases may be put from which we may assume it to be really valid. It may have happened, for instance, that the churchwardens were first sworn at or shortly after their nomination, and were afterwards sworn again at the visitation in September. Piper, the only person respecting whom there is any dispute, may have wished to be, and may actually have been, sworn at Easter, although the administration of the oath was not recorded, and may afterwards, in September, have been required to take the oath again. We may presume this, and I think it is perfectly fair and reasonable to presume it. To the other parish these persons were held out as churchwardens duly and legally appointed; and unless some such presumption as I have suggested is admitted, we must on the other hand be driven to presume, that which a court of law never can presume, that a fraud was contemplated and practised. I am therefore of opinion, that justice requires us to presume that the churchwarden had been sworn when he executed this certificate; and then it follows that the certificate is valid, and it becomes unnecessary to decide upon the other points raised in the case." *Littledale, J. (a)* "I am of the same opinion. If it were necessary to decide the question of law, whether the execution of a certificate is an act which a churchwarden *de facto*, who has not been sworn, has authority to do, I should wish for time to consider that point, upon which I at present entertain great doubts. But I think we need not decide that question, because the lapse of time is quite sufficient to justify us in presuming that every thing necessary to be done to make the certificate valid and binding was done. I think that we may fairly presume that Piper, upon his nomination to the office, went before the commissary and took the oath, and that the fact of his having taken it

(a) *Holroyd, J.*, was absent.

at that time was, from some circumstance or other, omitted to be registered. We cannot presume fraud and illegality, which we must do, if we decide against the certificate upon this objection. With respect to the supposed necessity of both the churchwardens signing the certificate, the statute only requires that the major part of the aggregate body of churchwardens and overseers shall sign, and not that the major part of each of those classes of officers shall sign. Upon the whole, it seems to me that we must consider this as a valid certificate, and therefore that the order of sessions must be quashed."

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Rex v. Upton Gray, 10 Bar. & Cres. 807. Appeal against an order of removal of T. Woodman and family from Upton Gray to Bishop's Waltham, both in the county of Southampton. Order quashed. Case:—A certificate was produced by the respondents from the parish chest of their parish, signed by two churchwardens and two overseers of the parish of Bishop's Waltham, dated the 16th of April, 1748, by which it was acknowledged to the former parish, that Peter Woodman, the great grandfather of the pauper, was legally settled in the latter parish. The certificate had never been discharged so far as it regards the pauper. On the part of the appellants it was proved from the parish books of Bishop's Waltham, that on the 27th day of May, 1747, five overseers were appointed by the said parish; their names were Harris, Edney, Vernon, Stares, and Cowdery, of whom Harris and Cowdery signed the above certificate, dated the 16th of April, 1748. In an indenture of parish apprenticeship, dated the 24th of October, 1747, it was recited that at that time the said five persons, viz. Harris, Edney, Vernon, Stares, and Cowdery were overseers; and that at the same time four persons named Homer, Barefoot, Hellyer, and Wateridge (of whom Homer and Wateridge signed the above certificate), were churchwardens of the parish of Bishop's Waltham. It was also proved on the part of the appellants, from the parish books, that a church rate for the said parish for the year 1747 was signed on the 8th of May, 1748, by four churchwardens, whose names were there stated to have been Horner, Barefoot, Hellyer, and Wateridge. It was also proved on the same part from the same books, that on the 6th July, 1748, five overseers were again appointed for the same parish, whose names were there stated to have been Lacy, Parker, Trodd, Edney, and Suet. It appeared also by the said parish books, that from the year 1633 to 1829, four churchwardens had been regularly chosen every year of the said parish. By the proper visitation books for 1746, it was proved that four churchwardens were sworn in for the parish of Bishop's Waltham, for the year ensuing the date of such swearing in. The visitation books for the year 1747 were lost. By the visitation books for 1748, it was proved that on the 19th September, 1748, four churchwardens were sworn in for the said parish for the year ensuing that date. By the same books it appeared, that in twelve or thirteen different years, between the years 1683 and 1829, four churchwardens *had not been sworn in* for the said parish, but that in those instances less than four had been sworn in. It was contended on the part of the appellant parish, that under the circumstances above stated, the certificate granted by the appellant parish was bad, it having been signed by two out of five persons, whose appointment as overseers was void as to all, (inasmuch as by the stat. 43 Eliz. c. 2, s. 1, not more than four overseers can be appointed,) and on the ground that the majority of the parish officers had not signed it. On the part of the respondent parish it was contended that after so long a period (being more than eighty years), any possible case by which the certificate might be supported ought to be presumed. Hence, as it might be presumed, either that a new and valid appointment of Cowdery and Harris as overseers, had been made for the appellant parish in the interval between the 24th of October, 1747 (when it is recited as above that there were five overseers), and the date of the certificate 16th of April, 1748; or that at that date there were not four churchwardens sworn in, in either of which cases the certificate would be signed by a majority of the parish officers, such presumption should now be made. *Bayley, J.* "This is an attempt to carry the cases of *Rex v. Catesby* (*ante*, 777,) and *Rex v. Whitchurch* (*ante*, 781,) to a most

A certificate was signed by two churchwardens and two overseers on the 16th of April, 1748. On the 27th of May, 1747, five overseers were appointed, two of whom signed the certificate. A church rate was signed on the 28th of May, 1748, by four churchwardens. Five overseers and four churchwardens were appointed in 1746. The court would not presume any facts to make this certificate valid.

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unreasonable extent. In the last of those cases in the certificate four persons were described as churchwardens and overseers of the parish, but it purported to be signed by three of them only; by one Piper as churchwarden, and by two others as overseers. It was proved by the visitation books that in the year 1758 the two churchwardens were sworn in after the date of the certificate; and it was therefore contended that Piper, the party who signed the certificate as churchwarden, was not at that time churchwarden *de jure*, and therefore that it was not binding on the parish. It appeared further by the visitation books that no churchwardens were sworn in from 1751 to 1758, but the parish who had granted the certificate had, from the year 1758 to the time when the order of removal was made, treated it as valid, for it had relieved the pauper while he was residing in another parish. The sessions having found in favour of this certificate, the court held that it might reasonably be presumed that Piper, after his nomination in 1758, and before he did any act as churchwarden, had gone to the commissary and had been sworn into office before him; and, under the circumstances of that case, such a presumption was not unreasonable, for it was not inconsistent with any other fact. In *Rex v. Catesby* (2 B. & C. 814; 4 D. & R. 434), the certificate which the law required to be signed by a majority of the parish officers, purported to be signed by one churchwarden and one overseer. If, therefore, there were two churchwardens and two overseers, it was not valid. The sessions having presumed in favour of the certificate, it was for the court to say whether there could be any state of facts to make it a valid certificate, and they decided that it might be valid on two grounds. By custom there might have been only one churchwarden in the parish, and therefore the sessions might have presumed that one only was appointed; or two overseers might have been originally appointed, and one of them have died before the certificate was granted. Then what is the state of facts here? Can the court say that the justices at sessions have done wrong in refusing to make the presumption which they were called upon to make? It is conceded that the presumption is one of fact, which in an ordinary case it would be for a jury to decide; but it is said that a jury ought to draw such a presumption whether they believe the fact really did exist or not; and a dictum of Sir W. Grant to that effect has been cited. To that, as a general proposition, I cannot agree. I would not direct a jury to presume that which they believe to be contrary to the fact. Here the fact which we are called upon to presume is not only highly improbable in itself, but wholly inconsistent with other facts which existed about the same time. We are first to presume that the four churchwardens were not sworn in. That would be presuming that they committed a breach of duty when we ought to presume rather that they discharged their duty. It is then said that we may presume that one of the churchwardens died. Such a presumption, if made at all, ought to have been made by the sessions, and not by us. The other ground is still more unreasonable. It is said there was a bad appointment of overseers, and that we ought to presume a new appointment of overseers before the certificate was granted. In the next year, however, it appears that five overseers were again appointed. We must, therefore, presume that the error as to the number of overseers was discovered between October, 1747, and April, 1748, although the ancient erroneous practice was again adopted in October, 1748. I think there was nothing in this case to warrant any presumption of fact necessary to give validity to this certificate, and I cannot say that the sessions ought to have drawn from the facts stated any of the conclusions which it has been insisted they ought to have drawn." *Littledale, J.* concurred. *Parke, J.* "I am of the same opinion. The doctrine attributed to the Master of the Rolls in *Hillary v. Waller* may be true as applied to the particular subject-matter which he was then discussing. A jury would probably be directed to presume, after a lapse of time, the reconveyance of a legal estate by trustees, without any specific evidence of a deed of conveyance, provided there be no fact to rebut such presumption." Order of sessions confirmed.

Persons described as officers of the parish, may be

Rex v. Samborn, 3 T. R. 609. The certificate stated that T. A. and R. B. of Samborn, churchwarden and overseer of the parish of Great Coughton,

acknowledged the pauper to be settled at Samborn, in their said parish of Great Coughton. The hamlet of Samborn maintains its own poor separately from the parish, and has a churchwarden and overseer of their own. T. A. and R. B. were churchwardens and overseers of Samborn at the time of granting the certificate. It was objected that evidence ought to have been received, to show that the persons described in the certificate as the officers of the parish were the officers of the hamlet. *Buller, J.* "The evidence does not contradict, but it explains the certificate."

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proved to have been officers of the hamlet.

Rex v. St. Ives, 2 Sess. Ca. 153. A *mandamus* was moved for, to compel the churchwardens and overseers to sign a certificate, acknowledging a poor person being settled in their parish, on an affidavit that he had served an apprenticeship there, and that he was capable of getting a good livelihood elsewhere; but the court rejected the motion as a very strange attempt.

A parish is not compellable to grant a certificate.

5. *Of Allowance and Attestation.*

5. *Of Allowance and Attestation.*

Rex v. Wooton, St. Lawrence, Burr. S. C. 581; 2 *Bott*, 713. The parish officers of St. Lawrence gave to Thomas Pryor, the pauper, a common printed form of a certificate, acknowledging him to be settled in St. Lawrence. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of his removal. By Lord *Mansfield, C. J.* "A certificate cannot conclude the parish unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate; they are not bound at all events to allow and sign it; they have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularised. This certificate wants them; therefore it is no certificate within this act. And if it be not a certificate within the act, it cannot conclude the parish." *Yates and Aston, Js.* concurred.

Certificate not signed by two justices is null.

Justices are not bound to allow a certificate.

Rex v. Austrey (see case, *ante*, 780). The certificate was allowed by two justices of Derbyshire. The certifying parish (Appleby) was situated partly in Derby and partly in Leicester. By the court: "The allowance of a certificate by two justices was not, like the removal of a pauper, strictly an act of jurisdiction, although the justices had a discretionary power to refuse or allow a certificate; yet the allowance was merely a voucher that credence was due to the acknowledgment of the churchwardens and overseers, that the pauper was settled in their parish. For this purpose, the justices of either county might be supposed to have a competent knowledge of the parties, although one end of the parish might be situate in an adjoining county; and, therefore, they might be taken to be within the meaning of the act."

If the certifying parish is in two counties, the justices of either may allow it.

Rex v. Boston, 2 *Bott*, 561. The justices who allow the certificate may also attest as witnesses; but it must appear upon the certificate that they took upon them to act in both capacities.

The justices who allow may attest as witnesses.

Barleycroft v. Coleoverton, 1 *Strange*, 402; 2 *Bott*, 710. Order of removal from B. to C., reciting that the pauper had come with a certificate, allowed according to the act, from C. to B., and being now become chargeable they send him back to C. Moved to be quashed, because it is not said the certificate was attested, but only that it was allowed. *Sed per curiam*: "The attestation is by the statute made previous to the allowance; and, therefore, when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed." Order confirmed.

When due allowance presumed.

Rex v. Ashton Keynes, Burr. S. C. 725. The certificate was signed by A. B. and P. J., and in the allowance it was certified that P. J. came before the justices, and made oath that he was present with the other witness and saw it signed by the parish officers, and that *his* name was his own writing. The sessions thought this no certificate, because A. B.'s signature was not proved before the justices. But the court were clear that there was sufficient

1. *Acknowledgment of Settlement by Certificate.*6. *Proof of Certificate.*

A parish certificate of more than thirty years' date, acknowledging the pauper's grandfather and father to belong to the appellant parish, produced by a rated inhabitant who was overseer of the respondent parish, was held to be evidence, and that the witness was not competent to give that account; and it seems that if necessary he might be examined as to the custody.

On an appeal, the respondents, in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer: Held, that such evidence was inadmissible.

proof of A. B.'s attestation, for P. J. swears that he was present with A. B. and saw the officers sign it, &c., and is above thirty years old: and it was very unreasonable for the parish to quibble it off in this manner now.

6. *Proof of Certificate.*

Rex v. Netherthong, 2 M. & Sel. 337. Order of removal from Netherthong to Honley discharged. Case:—A rated inhabitant and overseer of Netherthong produced a certificate, dated in 1756, from Honley to Netherthong, acknowledging the pauper's grandfather and father to belong to Honley. It was objected, that before such certificate could be received and read in evidence some account must be given of it, and whence it came, which the witness was not competent to give, being a rated inhabitant of Netherthong. The sessions refused to permit the witness to give evidence. It was admitted that after *Rex v. Ryton* (post, 786), the ruling of the sessions could not be sustained; but it was prayed that the case might be remitted to be heard on the merits. Lord *Ellenborough*, C. J. "I remember upon the trial of an action for a false return to a *mandamus*, a corporator was called to produce some of the corporation muniments, and objection was taken to his admissibility; but Lord *Kenyon* said, 'that he should hold him capable, as a depositary of the muniments, of being brought forward for the purpose of producing them, and that if the party objecting wished to inquire as to the custody he might, and that he would receive the evidence.' If the parties choose to stand on such a point as this, it may be as well that they should abide by it." Order of sessions quashed. See the 3 Geo. II. c. 29, s. 8 (*ante*, 774), which directs that a certificate, after it has been allowed, and the oath of its execution certified by the justices, shall be evidence without further proof.

Rex v. Debenham, 2 B. & Ald. 185. Removal from Debenham to Kenton quashed. Case:—The pauper had gained a settlement in Debenham, unless it could be shown that his father at the time resided in that parish under a certificate from Kenton. No such certificate could be found in the custody of Debenham. The pauper's father, James Driver, proved that in 1771, having been removed from Debenham to Kenton, Debenham refused to allow him to return unless Kenton would grant him a certificate; to this Kenton consented. An order for granting this certificate was made at the quarterly meeting of the directors and guardians of the incorporated hundreds of Loes and Wilford, (in which Kenton is situated,) as appeared by an entry in the minute book of the proceedings of the hundred-house quarterly meetings, dated 20th March, 1771. And to prove that such certificate was delivered to the respondents in pursuance of such order, a book was produced from the parish chest of Debenham, on the outside of the cover was "Certs. Rec'd. Bonds do. Coppys of Orders, 1756." This book contained memorandums of orders of removal, of bonds and certificates received. The certificates were regularly numbered, and under the title of certificates received was the following entry, dated 1771, "No. 88. John Polkins from Kenton.—No. 89. James Driver, do." There were a variety of other certificates subsequently entered. The sessions were of opinion that this book was not admissible in evidence. *Abbott*, C. J. "The principles of the law of evidence in this country are founded on the strongest sense and soundest reasoning. It is of the first importance to preserve them strictly; inasmuch as they are the great safeguards of the subject, in the administration of justice in all cases, from those involving property of the most trifling amount to those where the life of an individual is at stake. I therefore should be extremely unwilling to come to any decision which should break in upon any established principle. It is an established principle, that nothing said or done by a person having at the time an interest in the subject-matter shall be evidence either for him or persons claiming under him. Now the entry in this book is of that description; for it is made by a person having an interest to make it, inasmuch as it is produced as proof of the delivery of a certificate by which the parish, of which the party making an entry is an inhabitant, is to be relieved from the burden of maintaining the individual named in the certificate. I think,

therefore, that the safest course which the court can pursue will be to hold, that the sessions were justified in rejecting this evidence. There are, however, in this case, other circumstances from which the sessions may draw the conclusion, (if they shall think fit so to do,) that the certificate was in fact delivered. I think, therefore, that the case should go back to be re-heard upon that point." *Bayley, J.* "I am entirely of the same opinion, that the entry in this book was not evidence, the effect of it being to advance the interest of the person who made it." *Holroyd, J.* concurred. Case sent back to be re-heard.

Rex v. Ryton, 5 T. R. 259. Where the respondents produced a certificate more than thirty years old, purporting to be granted to their parish by the appellant parish, the Court of King's Bench said that it was sufficient for the respondents barely to produce the certificate to the sessions, without giving any account of it. (See *Rex v. Netherthong*, 2 M. & Sel. 337, ante, 786.)

1. *Acknowledgment of Settlement by Certificate.*

Production of certificate sufficient.

7. *Of the Delivery of Certificate.*

7. *Of the Delivery of Certificate.*

A certificate of the master must be delivered to prevent his apprentice from acquiring a settlement.(a) (*Rex v. Wensley*, 5 T. R. 154.) [See case and judgment, *post.*]

Rex v. St. Nicholas, Harwich, Burr. S. C. 171. *Wright, J.* said "That the neglect to deliver did not make the certificate ineffectual; the parish who gave the certificate is at all events bound by the certificate, and the certificate is therefore good as against them."

A certificate may be evidence, though not delivered.

Rex v. Egremont, 14 East, 253. William Gainsford removed from Egremont to Cockermouth. Order quashed. Case:—The pauper was bound apprentice to J. Raney, April 18th, 1802, for seven years, and served more than forty days of the latter part of his apprenticeship with J. B. in Cockermouth, who came into that parish with a certificate from an amicable society, acknowledging him to be a member of that society. On the certificate was an indorsement signed by a justice, according to the act. The only question was whether the production of the certificate was sufficient evidence under the 33 Geo. III. c. 54, without proof of its having been delivered to the churchwardens and overseers of Cockermouth? It was said that this evidence was sufficient, for the 18th section of the act provided that such a certificate so attested and certified "shall be taken, deemed, and allowed in all courts whatsoever as duly and fully proved, and shall be taken and received as evidence without other proof thereof." But that if this were not sufficient, yet the sessions under the circumstances might presume that it had been delivered, as it was produced in court by the parish of Cockermouth. Lord *Ellenborough, C. J.* "To warrant them in presuming any fact, there must be presumable matter. The mere giving of the certificate by the society to the member is not made sufficient by the act to protect his residence under it in the parish, without a delivery of it to the parish officers. The 17th section says that no members of the society who shall come to inhabit in any parish, and shall deliver to the churchwardens and overseers of the poor of such parish a certificate, &c. shall be removable till actually chargeable. But if it remain in the pocket of the certificated person, that is not sufficient to prevent a settlement being gained under it. Here there is an absence of any proof of its having been delivered to the parish officers before the period when the apprentice served his master in Cockermouth, and therefore an exclusion of any presumption of the fact." Order of sessions quashed.

A certificate from a friendly society to a member, under 33 Geo. 3, c. 54, must be delivered to the parish officers.

8. *Persons protected by Certificates from Removal.*

Rex v. St. Peter and St. Paul, Bath, Cald. 213. The pauper was removed

8. *Persons protected by Certificates from Removal.*

(a) In *Rex v. St. Nicholas, Harwich, Chappel, J.* is reported to have said, "That the delivery to an inhabitant, though it did not appear that he was a parish officer, is sufficient; but this mode would afford such an opportunity for

fraudulently defeating the object of the regulation, that the courts would hardly countenance such doctrine, especially as the statute seems to require a delivery to the churchwardens or overseers."

Certificate protects paupers residing in a poor-house of their parish situated in another parish.

1. *Acknowledgment of Settlement by Certificate.*

from the parish of L. and W. to St. Peter and St. Paul, Bath. Order confirmed. Case:—The parishes of St. Peter and St. Paul had together purchased a piece of land in L. and W., and built thereon a common poor-house. In this they placed the pauper and others, giving them certificates to L. and W. The pauper had not been chargeable to L. and W., but was removed by it on the ground that he was not an object of the certificate act, and therefore not protected by it. Lord Mansfield, C. J. held that no restriction was imposed against two parishes uniting under 9 Geo. I. c. 7, s. 4, to purchase a building for their poor, and that they might purchase it in a third parish; but when it is once purchased it becomes a part of the local system of each parish; and if the poor will not go there, they are not entitled to relief; and that the certificate acts authorize the whole body of the poor of whatever denomination and with whatever object, to leave their own, and to remove into any other parish, provided they can obtain the protection of a certificate. Buller, J. "As to the difficulty about bastards gaining settlements by birth, I should doubt whether the poor-house is not to this purpose to be considered as part of the parishes to which it so belongs, as in the case of children born in gaols." Order quashed.

9. *To what Individuals a Certificate extends.*

An unborn child is included in a certificate, so as to prevent his gaining a settlement by hiring and service.

A certificate to a spinster with child, acknowledging both to be legally settled in the parish, such parish is bound to receive the bastard.

But a certificate stating the woman to be unmarried, and agreeing to receive her and all the children she might thereafter have, does not extend to a bastard born several years after.

A certificate does not extend to children after they become heads of families. The family consists of those who live under the same roof with the *pater-fami-*

9. *To what Individuals a Certificate extends.*

Rex v. Sherborne, Burr. S. C. 182. The case stated that the pauper's father came to Sherborne with a certificate including his wife and family from Thornford. About two years after, his wife died, and he married the pauper's mother, and three years after this marriage the pauper was born in Sherborne, whilst his father resided under the certificate. When the pauper was sixteen, he was hired and served for a year to an inhabitant of Sherborne. The court held that the pauper did by his birth come by certificate into Sherborne, and that he was restrained to the two modes of acquiring a settlement specified in the statute. (No argument was raised as to the second wife.) (S. P. *Rex v. Bray*, M. 19 Geo. II., Burr. S. C. 259; and *Rex v. Buckingham*, Burr. S. C. 314.)

Rex v. Frampton-upon-Severn, post, 803. A father went with a certificate to A. from B., but returned to B., and lived there for many years, and where he had a son. The son went to A., and hired himself for a year, and thereby gave a settlement.

Rex v. Ipsley, Burr. S. C. 650. A certificate was given by Studley to Ipsley, which acknowledged "Ann Causier, a spinster, and the child she now goeth with, to be legally settled in Studley." She was delivered of a child in Ipsley, and removed to Studley. The court held that the parish of Studley was bound by this certificate, thus noticing the woman's being unmarried and with child, and acknowledging the child she then went with to be legally settled in that parish.

Rex v. Mathon, 7 T. R. 362. The parish of Mathon engaged by a certificate to receive and relieve M. C. with the child of which she was then pregnant, and all other children she might thereafter have. Some years after she had an illegitimate child in the certificated parish. Lord Kenyon. "It is not now necessary to question the propriety of *Rex v. Ipsley* (*supra*), as that certainly went much beyond the former cases on the subject. However that is distinguishable from the present, as that only extended to the child with which the woman was then pregnant, and a child *en ventre sa mere* is capable of being described. But this child was not born till eight years after the certificate was granted, and being illegitimate it is not included within the general words of the certificate, which extends only to legitimate children."

Rex v. Darlington, 4 T. R. 797. Sarah, widow of T. Milburn, and seven children, were removed from All Saints to Darlington. Order confirmed. Case:—The grandfather of the pauper's husband came to All Saints with a certificate from Darlington. During his residence there he had a son, Thomas, who lived with him as part of his family, except for one year, when he was a servant in All Saints; after which service he returned to his father, and married, when he had a child, the pauper's husband, who lived in All Saints till his death. The pauper's husband, at the age of fourteen, was hired and

served for three years in All Saints. Some time before this service the grandfather returned with his wife to Darlington (leaving his son and son's family behind), and died there. Lord Kenyon, C. J. "By 8 & 9 Will. III. c. 30, the parish to which the certificate is granted is obliged to receive the certificated person, *together with his or her family*. Now what is the fair legal import of the word *family*? It is true that in construing a will, and where it is the intention of the testator that it shall extend beyond *the immediate children*, it may have that operation; but that is not the sense in which it is used in this act. In common parlance the family consists of those who live under the same roof with the *pater-familias*; those who form his fireside. But when they branch out and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son on account of the positive words of the act of parliament, he being part of the father's family; but when he himself becomes the head of a family, then the words of the statute, public policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. Giving full effect to the certificate, as far as the words of the act and the intention of the legislature go, I think it meets with its boundary line, when it has protected the family of the certificated person, that is, all those who live with the *pater-familias*, and consequently that this grandchild, who was the son of the head of a distinct family, was not prevented gaining a settlement by hiring and service." Grose, J. "Grandchildren are not, properly speaking, of the family of the grandfather, but of his son; for when the son becomes the head of a new branch, and has children of his own, he ceases to be a part of his father's family, and his children then form a part of his own family. Orders quashed. [Same point in *Rex v. Heath*, 5 T. R. 583, and *Rex v. Hampton*, *id.* 266.]

1. Acknowledgment of Settlement by Certificate.

lias, who form his fireside. (See *Rex v. Mortlake*, *post*, 790.)

Rex v. Idle, 2 B. & Ald. 149. The 35 Geo. III. c. 101, did not repeal the 33 Geo. III. c. 54. And therefore where an unemancipated daughter was delivered of a bastard child in the township of Idle, during her father's residence there under a certificate acknowledging him to be a member of a friendly society established under 33 Geo. III. c. 54, it was held that such certificate extended not only to him but to all members of his family; that the daughter was therefore at the time of her delivery residing in the township under the authority of 33 Geo. III. c. 54, and that by sect. 35 of that act, the settlement of the child followed that of the mother.

A certificate under the friendly society act to a man will include the family.

Rex v. Testerton, 5 T. R. 258. Testerton gave Great Ryburgh a certificate for Thomas Wood, the father of the pauper, his wife and seven children, by name, of which the pauper was one. The pauper lived with his father at Ryburgh till he was twenty; he then lived as a servant in Ryburgh for a year, and returned to his father. He then served two years more as a servant in Ryburgh, and afterwards returned to his father and resided a year with him, and then married, and has lived in Ryburgh till this order was made, but never with his father since his marriage. His father has been dead about five years. Lord Kenyon said, "This case was not contrary to *Rex v. Darlington* (*ante*, 788), for here the pauper is mentioned by name in the certificate itself, and he has never gained any settlement or lived out of the certificated parish since it was given." Order of removal to Testerton confirmed.

If the child is named in the certificate, his children are included.

Rex v. Batheaston, 8 T. R. 446. E. Gay, the grandfather of the pauper, went to Box with a certificate from Batheaston, certifying him, his wife, and "Edward and Thomas their children." Edward lived with his father till he married at Box, and had the pauper, who was hired and served as a servant in Box. The order of removal of pauper to Batheaston was confirmed; and the Court of King's Bench held that the distinction was taken in *Rex v. Testerton* between those cases where the certificate is granted to a person and his family generally, and those where the son is mentioned by name in the certificate; that in the former a grandson is not within the protection of the certificate; but that in the latter, where the son is named, his family, until they are emancipated, are within the protection of the certificate, not as the grandchildren of the principal person named, but as the family and

Same point.

1. *Acknowledgment of Settlement by Certificate.*

Persons who come into a parish under a certificate must also reside there under it, for the purpose of being within the operation of it; therefore where a son of a certificated person included as one of the father's family, marries and lives separately from the father, his apprentice may gain a settlement in the certificated parish.

A certificate granted to T. C., and J., his wife, engaging to receive them, *their child or children born or to be born*, only extends to a son

children of the person who is also named, and therefore *Rex v. Testerton* (*ante*, 789,) ought to govern this case." Order confirmed. (a)

Rex v. Mortlake, 6 East, 397. Removal of Mary Dormer and children from Mortlake to Great Marlow, quashed. Case:—John Dormer and Ann his wife went with a certificate from Hambleton to Great Marlow, and during their residence at Great Marlow had a son William. John and William died there; but William had left his father's family, married, and occupied a separate house at Great Marlow, and had a son named Thomas, who in 1760, several years after the death of John and Ann, was bound apprentice to his father for seven years, and served the same at Great Marlow. Thomas was afterwards married and had a son named Thomas, now deceased, who was the husband of the pauper and the father of the children removed. The question was, whether under the apprenticeship of T. D. the elder to his father W. D., and the 12 Anne, c. 18, T. D. the elder had gained a settlement in Great Marlow? Lord *Ellenborough*, C. J. "The question is, whether William, the son of John, who was once covered by his father's certificate, ceased to be so when he married and lived separately from his father; for if he ceased to be covered by the certificate himself, there seems to be no reason why he might not communicate a settlement to another, as well as gain one himself in the certificated parish. This depends upon the meaning of the word '*family*' in 8 & 9 Will. III. c. 30. The meaning of the word is not to be taken in its largest sense, and has been soundly restrained by the determinations in *Rex v. Darlington* (*ante*, 788,) and *Rex v. Heath* to those who constitute part of the existing household and family of the certificated person, or as Lord *Kenyon* expressed it in *Rex v. Darlington*, those who form his fireside. That character cannot apply to William after he had married and left his father's house and had become a new stirps, having a family of his own. *Rex v. Hampton* was decided upon the ground that the second wife continued after her husband's death to be the root and remains of the old family, and not a substantive distinct family, as here. She still continued as the representative of her deceased husband; but here the son had started for himself at the head of a new family by marrying and taking a separate house for himself. He was then in a condition to gain a settlement for himself in the certificated parish. But the words of the statute of Anne are relied on to show that he is not such a person with whom an apprentice bound to him could gain a settlement there; and it is said that they are in the disjunctive '*come into or reside in*;' but upon referring to the certificate act, the 8 & 9 Will. III. c. 30, which speaks of persons who '*shall come into any parish, there to be, inhabit, and reside*,' and the 9 & 10 Will. III. c. 11, which speaks of doubts having arisen upon the former statute, by what acts any person coming to inhabit or reside within any parish by virtue of any such certificate may procure a settlement, and which enacts that no person who shall come into any parish (without more) by any such certificate, shall gain any settlement there except in certain ways mentioned; I say, upon comparing the words of the statute of Anne with the former provisions, I think those words must be read copulatively, and that they mean only to designate persons who may come into any parish for the purpose of residing, and actually reside there under a certificate." The other judges agreed.

Rex v. Thwaites, 1 M. & Sel. 669. Removal from Harrington to Thwaites confirmed. Case:—The pauper, Huddleston, was born in Thwaites, but was bound apprentice to R. Cass in Brigham, and served his whole time in that township. T. Cass, the father of R. Cass, resided at Brigham, under a certificate from Sunderland, which had been delivered to the parish of Brigham, acknowledging T. Cass and his wife to be settled within their township, and they promised to receive them, *their child or children, born or to be*

(a) The principle of these cases seems to be confirmed by *Rex v. Thwaites* (*sup.*), and the observations of Lord *Ellenborough* and *Bayley*, J. in *Rex v. Lcek Wootton* (*post*, 792), if reconcileable with

these cases, must be understood in reference to derivative settlements only, and so they seem to have been construed by Mr. *Nolan*, vol. ii. 174.

born in their township, as persons legally settled. R. Cass was born at the time of the certificate so granted and delivered, and during the time of the pauper's serving him, was a married man, residing with his family in Brigham, apart from his father; but it did not appear that he had gained any settlement there. The question is, whether the pauper gained a settlement in Brigham by such service with R. Cass? Lord *Ellenborough*, C. J. "This appears very clearly to have been a service under an indenture of apprenticeship to a person, who at the time was not protected by the certificate, and consequently, such a service as coupled with the residence will entitle the pauper to a settlement in Brigham. The certificate engages 'to receive the father and mother *their child or children born, or to be born.*' The parish officers perhaps did not know the name of the son, or probably they were ignorant of the fact that they had any son at the time; but it is clear that they meant only to comprehend the whole of the family with which the parents should migrate. The parents do migrate with their own son into another township, and there the son afterwards separates from them, and becomes himself the head of a distinct family, and so from that time was emancipated. This is a main feature that distinguishes this case from *Rex v. Sowerby*, where the party continued to reside with his mother, and brings it within *Rex v. Mortlake* (*ante*, 790), which is also an authority to show that the pauper, by serving the son, under these circumstances, in the certified township, will thereby gain a settlement in that township." *Le Blanc*, J. "It seems to be admitted, that this case falls precisely within the determination of *Rex v. Mortlake*, unless it can be distinguished upon the terms of the certificate. The circumstance of distinction relied on is this, that the certificate is in its terms an acknowledgment of 'the child or children born or to be born,' and this, it has been argued, is the same thing as if the child had been expressly named by its christian name in the certificate. If this were so, there would be an end of the question; for it has been determined, and that determination has never been shaken, that a child named in the certificate stands precisely in the situation of the father, that is, as one of the principals mentioned in the certificate; and therefore if the son had been named in this case, it would follow that a service with him as an apprentice would not have conferred on him a settlement in the certified parish. No case, however, has been cited to show that any thing less than an express mention of the person by name will have the same effect as naming him; or that describing him by the words 'child born or to be born,' has ever been held to be equivalent. The current of all the authorities seems to decide this, that if a person, who is not named in the certificate, but only comes within the scope of it, as being the child of a person named, abandon the roof of his parents and become himself the parent stock of another family, such person is not only capable of gaining a settlement himself, but also of being the means of others gaining a settlement by service with him, although his father remains protected by the certificate. I am therefore of opinion, that the decision of the sessions was wrong." *Bayley*, J. "The provisions of the certificate act seem to place this case in a clear point of view. The statute enacts, (a) 'That if any person or persons that shall come into any parish or other place, there to inhabit and reside, shall deliver to the churchwardens or overseers a certificate under the hands and seals of the churchwardens and overseers of any other parish, township, or place, thereby acknowledging *the person or persons mentioned* in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate shall oblige the said parish or place to receive and provide for *the person mentioned* in the said certificate, together with his or her family, whenever they shall happen to become chargeable to the parish, township, or place to which such certificate was given.' Therefore, if a certificate be granted to a person by name, the parish is bound to provide for him and his family; but if several members of a family be named in it, the parish must provide for each as distinct and separate members,

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born at the time of granting the certificate, so long as he continues a part of his father's family; therefore, where the son married, and resided with his family apart from his father, in the certified parish: It was held, that his apprentice gained a settlement by serving him in the said parish.

(a) 8 & 9 W. III. c. 30, s. 1.

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unconnected with each other. Who then, are the persons named in this certificate, whom the township acknowledge as their inhabitants legally settled? The father and mother only; for 'their child or children born, or to be born,' comprehends nothing more than their family; the children are to be received back as part of the family of the father, and not because they are acknowledged as settled inhabitants of the certifying township. In the cases relied upon, the certificate not only named the parents but the children also. But where children come within the certificate, merely under the description of the family of the person named, *Rex v. Darlington*, *Rex v. Heath*, and *Rex v. Mortlake*, have decided, that they continue under the protection of the certificate so long only as they constitute a part of the family. That is the plain and broad line of distinction." Order of sessions quashed.

The settlement of a son coming into a parish with his father under a certificate, as part of the father's family, not having before gained any settlement of his own, shifts with the settlement of the father in the certificated parish, though such son were named in the certificate.

Rex v. Leek Wootton, 16 *East*, 118. Removal of Joseph Bromwich, &c., from Leek Wootton to Milverton, quashed. Case:—Some time before and at the time of making the order of removal, Joseph Bromwich and his family resided in Coventry, within which the removing magistrates had no jurisdiction; but he had applied to the overseers of Leek Wootton for relief before the order was made. In April, 1790, Michael, the father of the pauper, went from Leek Wootton with his family, of which the pauper was one, to reside with his (Michael's) father, Joseph Bromwich at Milverton, who rented a tenement there at a rent of 6*l.* a year; but the same was of the yearly value of 10*l.* He had no lease thereof, but was tenant from year to year. He made a will, and dying in May following, devised his interest in this tenement to his son Michael, and appointed him his executor. Michael continued in possession and remained in this tenement many years, and paid the last rent due from his father as his executor. In 1791, and while he was in possession of the tenement, Michael applied to Leek Wootton for, and the parish officers there granted a certificate, by which they acknowledged him, his wife, Joseph (the pauper), and several other children by name, to be inhabitants, &c., of Wootton. Joseph was then about twelve years of age, and continued to reside at Milverton with his father on this tenement, five years after the death of Joseph Bromwich the elder, but never gained any settlement in his own right." Lord *Ellenborough*, C. J. "Where there are conflicting decisions upon the construction of a statute, the court must refer to that which is, and ought to be, the source of all such decisions, that is, the words of the statute itself. Some cases have been cited upon this occasion which are certainly of great weight, but which are in contradiction to the prior cases of *Cold Ashton* (*post*, 800,) and *Deddington*; and therefore the court are obliged to refer to the fountain head of all, the statute, to see which of them most corresponds with the words of it, and upon the best consideration I think that *Cold Ashton* and *Deddington* range more strictly within the words of 8 & 9 W. III. c. 30, and 9 & 10 W. III. c. 11. The second of these statutes recites the former, which empowers the granting of such certificates to provide for the person mentioned in the certificate, with his or her family; and the legislature evidently meant that the certificate should be entire to protect the *pater-familias* and his family, whether named or not; and the naming of any of the family is mere matter of convenience, in order the more easily to identify them, but is not directed to be done by the legislature, nor are any powers taken away from or given to such children on account of their being named or not named in the certificate. The 8 & 9 W. III. says, that when any person coming to inhabit and reside in any parish, shall at the same time bring and deliver a certificate to the parish officers, thereby owning the person or persons mentioned in the certificate to be an inhabitant or inhabitants of the parish certifying; every such certificate shall oblige the parish to provide for *the person* mentioned in the certificate, together *with his or her family*, when chargeable. Now the person to be named in the certificate is the *pater-familias*, with his family, if he happen to have any; and then and not before, it shall be lawful for any *such* person and his or her children, &c., to be removed. I am aware that the word *such* is not in the enacting part of the clause; but I think it must, to

complete the sense, be incorporated there, being in the antecedent part of the statute. The scope and object of the act was to protect the residence of a father or mother coming with their family into another parish, without casting a burthen upon it, or enabling them to gain a settlement there except in the two ways mentioned. There is nothing in the act which requires the nomination of the constituent parts of their family, and it is mere artificial reasoning which makes the distinction between such of the children as are, and such as are not, named in the certificate; a distinction which the act itself does not make. Then as the child, though named, was still to be considered only as a constituent part of the family, it brings it to the question, whether he was ousted of his derivative settlement from the father? Upon that point I think that the language of Lord *Mansfield* is founded in reason, and not opposed by the act, that the children of all parents must have the settlement of the father until they acquire another for themselves. I think therefore that the pauper in this case continuing part of his father's family at the time, derived the settlement from him, and was not repelled from it by the circumstance of being named in the certificate." *Grose, J.*, agreed.

Le Blanc, J. "The sessions have sent this case for the opinion of the court upon the question, whether the pauper acquired a derivative settlement from his father? We must therefore take it that the son came into the certificated parish as part of his father's family, never having gained a settlement in his own right; though that was not stated in the case. Then coming into the parish as part of his father's family, under the certificate, with only a derivative settlement from his father, the question is, whether while he continued part of his father's family, a settlement gained by his father there will not also be communicated to the son; whether the settlement of the son will not also shift with that of the father? The cases of *Testerton* and *Batheaston* have not decided that the son coming into a parish, and continuing as part of his father's family under a certificate, is not capable of having his derivative settlement shift with his father's settlement; they only decided that a child named in the certificate stood in a different situation from that of a child who was not named; and that the settlement of a son so named, *who had ceased to be part of the father's family*, should not shift with that of his father. Now here the son had gained no settlement of his own at the time, but was living with the father as part of his family; and the cases of *Cold Ashton* and *Deddington* have decided that the settlement of a son so circumstanced, though named in the certificate, shall vary with the subsequent settlement of the father; and that if he comes into the parish as part of the father's family, with a certificate, his being named in it does not prevent the shifting of his settlement with his father's. This case therefore is distinguishable from those of *Testerton* and *Batheaston*" (*ante*, 789).

Bayley, J. "The true construction of the certificate act seems to be, that a pauper having an independent settlement of his own, and not merely a derivative settlement from the father, shall not, if named in the certificate, gain a settlement in the certificated parish, except in one or other of the ways permitted to the father himself; but if the child come into the parish under the certificate with his father, having only a derivative settlement from the father, what is there to prevent his settlement shifting with that of his father, as in other cases? The act does not say it shall not; and the cases say, that though named in the certificate, he shall be treated as part of his father's family, and his settlement shift with his father's. It is said, indeed, that by the words of the act, the settlement of a certificated person can only be acquired in the certificated parish by two modes, and that this is not one of them. But I think the fallacy of the argument is this, that the children do not come into the parish under the certificate *suo jure*, but only as part of the father's family, and under his protection. The cases of *Cold Ashton* and *Deddington* have decided this point. And if this were not the true construction, this inconvenience would follow, that however young the children might be, coming with their father into the parish with a certificate naming them, if the father gained a new settlement

1. *Acknowledgment of Settlement by Certificate.*

If a child be intentionally left out of the certificate, it does not extend to that child, although he may not have become the head of a family.

The parties themselves may narrow the extent of the certificate.

there, he would be settled in one parish and the children in another." Order of sessions quashed.

Rex v. Storrington, 7 T. R. 133. Order of removal of James Ceary from Storrington to Patching quashed. Case:—Soon after 1778 the pauper's father, John Ceary, returned to Storrington with a certificate, acknowledging him, his wife, and two children, by name, to be inhabitants of Patching; but the pauper, then about fourteen years of age, was neither included in a previous order of removal to Patching, nor in the certificate; the parish officers of Storrington having declared, upon the examination of the father before the magistrates, that as the pauper got his own living they had nothing to do with him. The pauper, both before and after his father's removal, supported himself entirely by daily labour, and lodged and boarded with his father, for which he paid. About two years after his father's return with the certificate, and while he continued to reside under it, the pauper, being then about sixteen years of age, hired himself for a year to Mr. Brown, of Storrington, with whom he had previously served as a day-labourer, and served the year out, after which he again worked for himself as a day-labourer, and lodged and boarded with his father on the same terms as before, until he married; he continued to reside at Storrington until he was removed by the present order. By Lord Kenyon, C. J. "In deciding this case I wish not to disturb any of the authorities which have been cited; but my opinion in this case proceeds upon its own particular circumstances. Consider the situation of this family; the father, mother, and two of the younger children, who had been resident at Storrington, were removed by an order of justices to Patching, who gave them a certificate, and they returned to Storrington. Now, before and at the time when this certificate was obtained, the pauper had worked as a day-labourer, and received his wages for his own use; had lodged in his father's house, and paid a weekly sum for that accommodation. The form of the certificate too is material, it was granted to the father, mother, and the *two younger children*; but the pauper was not included either in the order of removal, or in the certificate. If, indeed, he were under the disability of gaining a settlement by 9 & 10 W. III., to be sure this is not one of the modes allowed by that act. But the question is, whether he is to be considered a certificated person? Generally speaking, *if a certificate be granted to the head of a family, it extends to all the members of that family*; but it is competent to the parties themselves to narrow the extent of a certificate; and the certificate in question seems to have been specially framed for the purpose of excluding the pauper from the operation of it. It is not conceived in general terms, but, after mentioning the father and mother, it goes on to specify the two younger children, omitting the pauper, who was the eldest; and it is a known maxim *expressio unius est exclusio alterius*. Therefore, on the particular circumstances of this case, I am opinion that the pauper was not resident at Storrington under the certificate, and consequently was not disabled from gaining a settlement there by hiring and service; but I desire to have it distinctly understood that I do not, by this decision, mean to shake the authority of any of the former cases." *Grose, J.* "The question is, whether the pauper's residence in Storrington were, or were not, protected by this certificate; for if it were not he is now settled in that parish. A certificate protects only three classes of persons:—those who are named in it; those who are part of the family of the certificated person when it is granted; and his children born in the certificated parish after that time. Now the pauper certainly does not come within either the first or the third class: nor was he part of his father's family, as far as respects the certificate; for the certificate does not mention his name, though it does mention the names of the younger children; and the parish officers declared that he was not included in the former order of removal, which was the occasion of this certificate, because he was capable of gaining a livelihood for himself. All the parties interested considered the pauper to be *sui juris*, when the certificate was granted, and therefore it was not meant to include him; he was not a part of his father's family for the purposes of this certificate." *Lawrence, J.* "As the certificate would not be conclusive of the

pauper's settlement, it seems to follow that he gained a settlement in Storrington.

10. Of the Effect of a Certificate.

Rex v. Wootton St. Lawrence, Burr. S. C. 581; 2 Bott, 713. The certificate had not been duly allowed, still it was argued that it amounted to an admission by the parish of the pauper's then settlement; but the court held that if it was not a certificate within the act, it did not conclude the parish, and if allowed as evidence and presumption, would lead to great litigation.

New Windsor v. White Waltham, 1 Stra. 186. The pauper went with a certificate from White Waltham, owning him and a woman as husband and wife, into New Windsor, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled where born. But by the court: "The certificate is conclusive as to White Waltham, and they are not to be admitted to dispute the validity of the marriage; and therefore the children must be sent to White Waltham."

Rex v. Headcorn, Burr. S. C. 253; 2 Stra. 1233. Maidstone gave a certificate to Headcorn, acknowledging Richard Burden and Mary his wife, and their four children, to be settled at Maidstone. Afterwards it appeared that Mary was not his wife, but that he had a former wife then living. Maidstone acknowledged the settlement of the real wife, but not of Mary and her children; and pleaded, that it would be hard that they should be forced to take two wives, and different children. But by the court: "The parish that certifies must take care for whom they certify; and the certificate is conclusive. The parish of Maidstone have by this certificate expressly acknowledged the said Mary to be their legal inhabitant; and the parish of Headcorn were thereupon bound to receive her. Therefore, the parish of Maidstone are obliged to provide for her and her children by Burden. Maidstone say they were deceived: but it was their own fault or folly if they were so; and they deceived Headcorn; therefore they ought to suffer, and not Headcorn."

Rex v. Ullesthorpe, 8 T. R. 465. Case:—The mother of the pauper married a person who enlisted soon after as a soldier, and had not been heard of by her for forty years, and was never again seen by her. Hearing he was dead, she married the pauper's father; Earl Philton gave a certificate to Ullesthorpe, including the father, Mary his wife, and their family. The original husband came home after the second marriage. The removal was of the father, mother, and pauper from U. to E. P., and the order was quashed by the sessions, which order of sessions was quashed by the court without opposition. (And see *Rex v. Lubbenham*, post, 796.)

Rex v. Tostock, 2 Bott, 739; Burr. S. C. 737. Case:—The pauper, Edward Parkinson, was born at Tostock of Elizabeth Parkinson, spinster, an inhabitant of Tostock; E. Jerman, who was settled in Islame, but resided in Tostock, was the putative father of the pauper; soon after the birth of the pauper, E. P. was married to Jerman; a short time after the marriage the parish officers of Tostock desired Jerman to get a certificate from Islame; whereupon Jerman applied to Islame for a certificate for himself, his wife, and his son, without informing them that the pauper was born a bastard; and they knew nothing of it: Islame granted a certificate, acknowledging Jerman, his wife, and Edward their son, to be inhabitants. Lord Mansfield, "This is the case of *Rex v. Headcorn* (supra), unless you can show that the pauper desiring a certificate as to the son, and that the pauper receiving the certificate, colluded with the parish officers of Tostock, in which case the justices should have found fraud: the certificate is conclusive."

Rex v. Buckingham, Cald. 64. Mary Swift, widow, was removed from Fringford to Buckingham. The pauper and her father jointly purchased a tenement for 14*l.* or 15*l.* in Buckingham: each paying a part of the purchase-money. It was surrendered to the father during his life, with the remainder to the pauper in fee: the father was admitted: in the father's lifetime the pauper married Robert Swift, who was settled at Fringford:

1. Acknowledgment of Settlement by Certificate.

10. Of the Effect of a Certificate.

Imperfect certificate but evidence as an admission.

A certificate, acknowledging the persons named in it to be man and wife, is conclusive to the parish, though it afterwards appear untrue.

Same point.

When the second marriage of the wife is not fraudulent or criminal, a certificate acknowledging the second husband, and M., his wife, will be conclusive, though the first husband return after the second marriage.

Where a certificate included, by mistake, a bastard as a legitimate child, it was held conclusive.

A certificate is conclusive between the parish certifying and the parish to which it is granted, although not delivered till after the removal.

1. *Acknowledgment of Settlement by Certificate.*

A certificate is not conclusive, excepting between the two original parishes.

When a question arises between the certifying parish and a third parish, the certifying parish may inquire into the truth of the facts stated in that certificate.

after the father's death the pauper alone, according to the custom of the manor, was admitted, and she and her husband came to and resided upon the premises until his death: on the 14th June, 1776, Fringford granted a certificate to the pauper, which was delivered to her and kept in her possession, and not delivered to Buckingham till after the removal: the pauper, after the granting the certificate, and before the removal, resided upon the premises upwards of forty days. The certificate was offered as conclusive evidence against Fringford, so as to prevent their setting up any settlement obtained in Buckingham, previous to the granting thereof. But the sessions were of opinion that the certificate, under these circumstances, did not prevent the pauper gaining a settlement at Buckingham by such estate and residence, and confirmed the order. It was moved to quash these orders, on the ground that the detention of the certificate by the pauper till after her removal, granted by the parish removing, and of which they could not be ignorant, would not entitle them to avoid the effect of it when produced at the trial against them, but that they were thereby concluded. No cause being shown to the contrary, both orders were quashed.

Rex v. Lubbenham, 4 T. R. 251. Order of removal of Elizabeth, wife of Thomas Hutchins, (then absent,) and H. her daughter, from Lubbenham to Oxendon, quashed. Case:—The pauper, Elizabeth, was married about seventeen years ago to J. Hutchins. Two years afterwards he was convicted of a robbery, and condemned, but reprieved on his enlisting as a soldier: he went abroad, and five years after, Elizabeth (hearing that he was dead) married Ponton at Lubbenham. About a twelvemonth after, Hutchins returned. Whilst Ponton and Elizabeth were residing at Threddingworth as man and wife, they went together to Lubbenham for a certificate to Threddingworth, who granted one, acknowledging Ponton and his wife (without mentioning her christian name) to be settled in Lubbenham, and they returned with it to Threddingworth. Ponton was never married to any other person. H. was born during their cohabitation at Lubbenham, and baptized as the daughter of J. Ponton and Elizabeth. Lord Kenyon, C. J. "In the first place, without considering the effect of the certificate, there is no doubt but that the second marriage was void, and consequently that the settlement of the pauper, Elizabeth, continued where her first husband was settled. But it is stated that she afterwards contracted a marriage *de facto* with a person whose settlement was at Lubbenham; and that she and her second husband applied to Lubbenham for a certificate to Threddingworth, which was accordingly granted. And therefore the question is, whether that certificate be conclusive against Lubbenham as to all the world, or only as between the two contracting parishes? Now estoppels in general are not to be favoured; they are to be extended only as far as the positive rules have gone; because the tendency of them is to prevent the investigation of the truth of the case. It is reasonable that a certificate, which is a kind of estoppel, should protect the parish which acts immediately on the faith of it; by the act of the officers of Lubbenham, the parish of Threddingworth were induced to receive the parties into their parish; but there is no necessity for extending the estoppel any farther. In all the cases, except that of *Honiton v. St. Mary Axe*, (a) the question arose between the parish granting the certificate and the parish to which it was given. That is the only case which extends the doctrine further; and there it is said that a certificate is conclusive on the parish granting it as to all the world. But the reason given by Lord C. J. Parker, 'that as all other parties are bound to receive the pauper, so the parish that certifies is concluded as to all other parishes,' is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore, as the reason on which that case was decided fails, we are delivered from the authority of it. Then what reason is there why the truth of the case should not be enquired into? No injury is thereby

(a) This case is reported in *Salk.* 535, recognizance of a fine, and thought to where a certificate was compared to the be conclusive.

done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would indeed be a hardship on Threddingworth parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against Lubbenham: but that reason does not extend to this parish. Therefore on that ground, and on the principle that estoppels are not to be favoured, the parish of Lubbenham ought not to be precluded from enquiring into the truth of the case: and according to the truth of the case it appears that the pauper, Elizabeth, was settled at the place of her first husband's settlement. I am therefore of opinion that the order of sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard." *Ashhurst, Buller, and Grose, Js.*, delivered their opinions to the same effect.

Harrison v. Lewis, 3 Salk. 253. A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law.

Rex v. Petham, 2 Stra. 1147. The pauper was bound apprentice to a certificate man in Tenterden, and after living with him there two years was by him assigned over to a parishioner of Lidd, with whom he inhabited and served for the remainder of the seven years. And the court were of opinion he had gained a settlement in Lidd; for the act had not made the binding void, but has only taken away one of the consequences of such binding for the sake of the certificated parish. It never intended to meddle with the case of a legal parishioner's apprentice, and when once there is an assignment to such an one, it is the same as if it had been an original binding: the true construction of the statute is, that *in respect to the certificated parish*, such binding or inhabitation shall give no settlement.

Rex v. Sherbourne, Burr. S. C. 182. It was observed by Mr. J. Denison, (to which all the court agreed,) that a certificate provides for the security of that parish only into which the certificate person came to reside by virtue of such certificate; but doth not exclude a certificate person from gaining a settlement in another parish, in the same manner as any other person may do.

Rex v. Silton, Burr. S. C. 269; 2 Bott, 59. The father and mother of John Milbourn, the pauper, came from Silton with a certificate to Wincanton. The pauper was afterwards born in Wincanton, and at twelve years of age was bound out by Silton apprentice to a tailor at Horsington for eight years, and served him there. By the court: "The pauper in this case was a person at large as to every other parish except Wincanton, to whom the certificate was delivered; and, therefore, he gained a settlement at Horsington."

Rex v. Horsley, Burr. S. C. 385; 2 Bott, 646. Horsley gave a certificate to A. Cope and his family, who went with it to Hollingsclough, where his son, the pauper, was born. The pauper, at twelve years of age, was hired and served for a year at Peck; and then returned to Hollingsclough. By the court: "The *Rex v. Silton* (*supra*) is in point, only with this immaterial difference, that there the son's settlement was gained by apprenticeship, and here by hiring and service."

Rex v. Bishopside, Burr. S. C. 381. Jonathan Joy came from Menwith with a certificate to Bishopside, where he resided for some years. Afterwards he purchased a freehold house for 10*l.* in Dacre cum Buerly, and went to inhabit there, to which place he carried his certificate and delivered it to the proper officer there. During his residence in Dacre, John Thackrey, the pauper, was bound to and served him as an apprentice in Dacre. By the court: "The delivery of the certificate was neither necessary nor proper; it ought to have been left at Bishopside. It is not directed to the officers of Dacre; besides, the master did not go to Dacre under the certificate, but as the owner of a freehold there, to which he had a right to go and inhabit in."

1. Acknowledgment of Settlement by Certificate.

A certificate is not binding against a subsequent settlement.

An apprentice to a certificated man being assigned to one in another parish, may gain a settlement in the other parish by serving him there.

Settlement prevented only in the certified parish.

A certificated person is at large as to every parish but the certificated one.

So also in the case of hiring and service in a third parish.

A certificate extends no further than to the place where first delivered.

1. *Acknowledgment of Settlement by Certificate.*

11. *Certificate how determined.*

11. *Certificate how determined.*

There are various ways in which the operation of a certificate may be determined: as

1. *By the Acquisition of a Settlement in any mode in a third Parish.*

2. *By a Settlement in the Certificated Parish, gained—*

First. By taking a Lease of a Tenement of the annual value of 10l.

Secondly. By Appointment to and Execution of a Public Annual Office.

Thirdly. By Residence of Forty Days on Estate acquired by Devise, Descent, and semble, Voluntary Gift.

Fourthly. But not a Purchase in its ordinary sense.

3. *By Abandonment of the Certificate.*

4. *By an Order of Removal.*

5. *By Certificate to another Parish.*

“The parish who grants must get rid of the certificate, and if that can be done only by presumption, it remains good.” “The *onus probandi* of a fresh settlement lies on the certifying parish.” (*Rex v. Warblington*, 1 T. R. 241, *ante*, 723.)

1. *It may be determined by the Acquisition of a Settlement in a third Parish.*

Rex v. Great Torrington, Burr. S. C. 753. By a certificate from Lancrass, Mary Bray came to Bideford, and inhabited there some years. Then she was bound apprentice by the parish of Lancrass, and lived under the indenture at Great Torrington for several years. After the expiration of the apprenticeship, she hired for a year, and served that year in Bideford. The question was, whether by this hiring and service she gained a settlement at Bideford, to which place she had come by certificate? And it was adjudged (the point being given up) that, “having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at liberty to gain a new settlement in Bideford, as any uncertificated person could be.”

[The like adjudged the same term, in *Rex v. Keynsham*, Burr. S. C. 429.]

2. *Determination by gaining a Settlement in the Certificated Parish.*

The legislature has imposed certain restraints on the acquisition of settlements in the certificated parish: but settlements may be gained,—

First. By really and bona fide taking a Lease of a Tenement of the yearly value of 10l.

Rex v. Findern, Cald. 426. A pauper obtained a certificate before he had completed forty days' residence upon a tenement of the yearly value of 10l.; by completing such residence the certificate will be avoided, and he may gain a settlement.

Rex v. Croft, 3 B. & Ald. 171. Removal from Croft to Stoney Stanton. Order discharged. Case:—The pauper was bound apprentice to and served Edward Stephens in Croft. The father of Stephens came into Croft under a certificate. After he came to Croft he occupied a house in Croft and some land in Marston, and in one year, while he was in the occupation of the said premises, he agisted three cows for two or three months in the fields of his landlord. No positive contract for the agistment was proved. The three cows were agisted for above forty days in the year, and the average value of the agistment, reckoned by the year, added to the value of the other tenements, made the whole above 10l. per annum; but, if the value of the agistment, taken only for the time that the cows were on the land, were to be added, it would make the whole less than 10l. *Abbott*, C. J. in delivering the opinion of the court said, “Upon the authorities there can be no doubt that the facts here stated must be deemed to be a coming to settle upon a tenement of the yearly value of 10l., within the meaning of the stat. 13 & 14 Car. II. c. 12. The only doubt was, whether a difference of construction might

(a) The principal cases relating to of Settlements by Renting a Tenement, this subject are collected under the head *ante*, 580 to 680.

A certificate is discharged by gaining a settlement in another parish.

A certificate avoided by forty days' residence.

Tenement under 13 & 14 Car. II. is a tenement under 9 & 10 W. III.(a)

prevail upon the certificate act, the 9 & 10 Will. III. c. 11, which is expressed in somewhat more precise terms, viz. 'bonâ fide take a lease of a tenement of the value of 10*l*.' It is obvious, however, that in construing these words, reference must be had to the former statute, to supply the word 'yearly,' which is wanting in this statute; and in like manner the words of the second branch of this clause, 'execute some annual office in such parish, being legally placed in such office,' have been construed, with reference to the 3 & 4 W. & M. c. 11, s. 6, to require a service of the office for an entire year. (*Rex v. Fittleworth*, Burr. S. C. 238.) No case has been found in which the 9 & 10 Will. III. has received a different construction from the 13 & 14 Car. II., as to the nature of the tenement or of the taking thereof. On the contrary, it has been decided, that a lease at will is a lease within the certificate act. (*Stra*, 502.) And in *Rex v. Shenston* (Burr. S. C. 474), Lord Mansfield says, the two acts are to be considered together, being in *pari materia*.

1. Acknowledgment of Settlement by Certificate.

Lease at will is within the act.

A residence by permission is not sufficient. *Taunton*, J. (*Rex v. St. Mary, Newington*, ante, 611; *Rex v. Nacton*, 3 B. & Ad. 543; ante, 611.)

Residence by permission is not sufficient.

Secondly. If the Pauper executes an Annual Public Office, being legally placed therein, he gains a Settlement in the Certificated Parish. (See "Settlement by Office," ante, 739.)

The words "legally placed therein" are not in the 3 & 4 Will. III. c. 11, s. 6.

Thirdly. By Estate. Estates acquired by Operation of Law, &c. (See "Settlement by Estate," ante, 680.)

Rex v. Cassington, 2 Bar. & Ad. 874. Appeal against an order of two justices removing W. Whitley, his wife and family, from Handborough to Cassington. Order confirmed. Case:—Robert Whitley, about sixty years ago, went to the parish of Handborough with a certificate duly signed, certified and allowed, acknowledging that he, his wife and family were legally settled at Cassington. In 1771, Thomas Whitley, father of the said Robert, duly made his last will in writing, and thereby devised as follows:—"I give and bequeath to my son Robert Whitley the sum of 5*l*., and my desire is that my son Robert shall live in that part of my house as he now doth, and at the same yearly rent which he now gives, as long as my son John shall enjoy or own the same: And all other my estate and stock whatsoever I stand possessed of at the time of my decease, I give to my beloved son John Whitley and his heirs for ever." It appeared by the court rolls of the manor of Handborough, that on the 18th of October, 1772, John Whitley, as son and devisee of Thomas Whitley, was duly admitted tenant to the house mentioned in his father's will. It further appeared from the same court rolls, that on the 25th of October, 1773, the said John Whitley surrendered the house to the use and behoof of Robert Whitley of Handborough and his heirs for ever, and at the court Robert Whitley did his fealty and was admitted tenant. It appeared also, that in the year 1773 it was not usual to state on the court rolls the consideration, whether valuable or otherwise, which were given for property surrendered; but they were mentioned in the copies of the court rolls delivered out. The copy was not produced in evidence in this case. Robert Whitley, the pauper's father, resided in the house more than forty days previous to such surrender, (and after his father's death and more than forty days after the surrender,) and during this occupation the pauper was born. Lord Tenterden, C. J. "It seems to me that under the will the pauper's father took an estate *pur autre vie*, that is, for John's life, defeasible on his ceasing to enjoy and own the estate. No one could say that John would so cease during the whole of his life, so long therefore as John lived Robert might hold his estate. And it was conveyed to him by the will of his father and not by his purchase or any act of his own." Parke, J. "Robert took an estate for life determinable on certain events. It is immaterial whether the estate be equitable or legal, the certificate is equally discharged. The case of *Rex v. Great Driffield* (8 B. & C. 684,) leaves all

Devise of an estate *pur autre vie* discharges certificate. *Quære*, whether estate conveyed on mere voluntary consideration will discharge certificate.

1. *Acknowledgment of Settlement by Certificate.*

Twenty years' possession of an estate by a certificated person gives him a settlement, and a child not emancipated during this time takes a derivative settlement.

the cases untouched where the consideration is any other than pecuniary." *Taunton, J. and Patteson, J.* concurred. The rule for quashing the order of sessions was made absolute.

Rex v. Cold Ashton, Burr. S. C. 444. In 1725 D. Harrison, Mary, his wife, and William, their son, went with a certificate from Woodchester to Cold Ashton. In 1728 W. Fido, the father of Mary, died intestate, leaving her and five other children, and being possessed of a tenement in Cold Ashton for the remainder of a term of eighty-two years, determinable on the death of himself and Mary. Upon the death of W. F., D. H. and Mary took possession of the tenement, and have occupied it ever since. No administration of the effects of W. F. was granted to any person. William lived with his parents in the tenement till 1748, when he married the pauper, Mary, and after his marriage he and his wife lived in Cold Ashton, separate from D. H., until the death of William in 1755. There were two questions: First, Whether D. H. acquired any settlement different from that to which he was entitled by the certificate? Second, Whether, if so, the son gained a derivative one? Lord Mansfield, C. J. "As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction: for it is not within the words of the 9 & 10 Will. III. c. 11, which speaks only of serving an annual office, and renting 10*l.* a year. But residing on a man's own estate was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 Car. II., not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to the principle on which the construction is founded; and, therefore, a man who resides on his own estate, though of ever so small a value, is irremovable. And this holds equally in the case of a certificate person who gains a settlement, if, after he comes in by certificate, he is under such circumstances as by his property he cannot be removed. Whether in this case Daniel Harrison had such a property in this leasehold estate when he first entered upon it, is a question that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removable from. For the statute of limitations doth not operate by way of barring the remedy only, but it gives a right. He may bring an ejectment after twenty years' possession; and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for there the possession of the tenant is that of the landlord. This possession gives a title from which the parish officers could not remove him, nor the next of kin. In *Rex v. Widworthy* (*ante*, 690,) they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned upon the general question, whether the next of kin gains a settlement without administration, I should have desired time to consider of it, and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others, as in this case; for where one is the sole next of kin, he has the undoubted right of administration. In general it is of more consequence that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son, the word *emancipation* is a loose term in our law, especially in the matter of settlements, and it is used in the books without affixing any precise idea. Indeed, it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are entitled to the settlement of their father till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to day that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived twenty years with his father in this tenement, or, at

least, very near it, and we cannot intend that he did not." *Denison, J.* was of the same opinion. (*Forster, J.* absent.) *Wilmott, J.* "As to the father, I do not think it material to say any thing about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule *stare decisis*, which is a right rule, and more especially in the poor law. Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title, without administration: after such a length of possession, one would be inclined to presume as much as possible. Now, here it is possible that Daniel Harrison and his wife might have some grant or assignment from William Fido in his lifetime; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might, possibly, have been a rightful one. It would be too nice to be computing days to see whether the son was with his father a day over or under the twenty years." And the order of sessions was affirmed.

Rex v. Shenstone, Burr. S. C. 468. The wife of Isaac Green, a certificate man, had an estate devised to her for life by her father; upon which she and her husband entered, and lived thereupon for above six months. The court: "Isaac hereby gained a settlement, notwithstanding the certificate."

1. Acknowledgment of Settlement by Certificate.

So if an estate be devised to the wife of a certificate man for her life.

Fourthly. No Settlement can be acquired by Purchase in its ordinary sense. The Law on this point is fully stated in the following Case.

Rex v. Great Driffield, 8 B. & C. 684. Order of removal of T. Harrison from Great Driffield to Garton quashed. Case:—The pauper's father was bound apprentice to Lyon, then residing in Great Driffield, under a certificate from Kirkburn. During the apprenticeship, Lyon bought a cottage at Great Driffield for more than 30*l.*, and the pauper served more than forty days after the purchase. *C. a. v. Bayley, J.* delivered the judgment. "The question was, whether the pauper's father gained a settlement in Great Driffield by serving as an apprentice to Lyon. It was contended that he did, because the certificate was discharged by the master's having acquired a settlement in Great Driffield by the purchase mentioned in the case; and if so, it was argued, that the subsequent service to the master, after he ceased to reside under the certificate, though by virtue of a binding made to him whilst so residing, was sufficient to confer a settlement on the apprentice. It is unnecessary to decide the latter question, if no settlement was gained by the master by the purchase which he made, and we are of opinion that no settlement was gained. [He then read the 9 & 10 Will. III. c. 11, and said,] *By the words of the statute no settlement can be gained by any act whatsoever; that is, as the context shows, by an act done by the pauper, other than the two which are pointed out by the act.* The purchase of an estate by Lyon is an act done by him other than those mentioned; and according to the plain and ordinary sense of its words, he cannot gain a settlement in the parish. But we are bound to construe every statute according to the plain import of the words, unless we feel ourselves bound by an uniform course of well-considered decisions giving a different effect to the provisions of the statute; or unless it would lead to such consequences that we can safely say that the legislature must have had a different intention from that which the ordinary import of the words convey. It will be found, however, that the decisions are few, and they are founded, in some degree, upon a mistaken supposition, that the point properly arose and was decided in the first reported case, that is, *Burclear v. Eastwoodhay* (1 *Stra.* 163; *Burr. S. C.* 221), in which it was held, that where a certificated pauper acquired an estate in right of his wife, his certificate was discharged; and it is stated in the judgment that he did not come to it by an act of his own, but by act of law. Other reasons, it is true, are assigned in the judgment, but it may be supported on that ground, for a settlement acquired by operation of law is not required by any act of the pauper, and therefore not prohibited by the statute 9 & 10 Will. III. In that case, Abraham Hacket came with a certificate into the parish of Eastwoodhay, and afterwards marries one Sarah Smith. Her father surrenders to her a copyhold estate of 20*s.* a year, and

A certificated person cannot acquire a settlement by purchase in its ordinary sense.

Burclear v. Eastwoodhay.

1. *Acknowledgment of Settlement by Certificate.*

Ivinghoe v. Stonebridge.

Rex v. Stansfield.

so the husband had it in her right. By the court: 'The 9 & 10 Will. III. is not an explanatory act, but new, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either that are there mentioned. If a certificate man by taking a tenement of 10*l.* a year gain a settlement, *a fortiori*, shall he who has an estate of his own, especially in this case, where he does not come to it by his own act, which might savour of fraud, but it is cast upon him by the operation of law. If he who serves a parish office gains a settlement by reason of his presumed ability, with greater reason shall he who has ability of his own, visible to all the world. It has been adjudged, that any other person by descent or purchase of a freehold or copyhold, or by being entitled to a lease for years, gains a settlement, and the parliament never intended to put a certificate man in a worse condition than another person.' The court, therefore, seemed to think that a certificated man might gain a settlement by estate coming to him by purchase. But that was not a case of purchase; and where an act says in distinct terms that a settlement shall be gained by two modes only, we are not at liberty to say he may gain it by any other. There the estate came to the pauper by operation of law; by voluntary surrender of the copyhold to his wife. The next case was *Ivinghoe v. Stonebridge* (1 *Stra.* 265). This case decided that an apprentice to a certificated man gained a settlement in 1709, because it was prior to 12 Anne, prohibiting such settlements. The opinion of the court, that the purchase of an estate made the certificate man a settled inhabitant, was expressly founded on *Burclear v. Eastwoodhay*, and was also extra-judicial. These two cases are not of sufficient weight to induce us to say, in the teeth of the words of the act, that a settlement may be gained by purchase, which is an act done. I come now to cases where the estates have been acquired by purchase for money. The first is *Rex v. Stansfield*, where a purchase for 47*l.*, paid by the pauper for a leasehold estate in the certificated parish, was held to confer a settlement. It is material to look at the language used by the court in their judgment. Lord C. J. Lee says, 'I do not know that the 9 & 10 Will. III. had been taken so strictly as the counsel suppose. A descent or devise, and, I believe, a purchase too, has been determined to gain a settlement upon the fact of a person not being removable from his own, and as not being included within the 13 & 14 Car. II.' The present question turns indeed upon the construction of the certificate act. Now, though this person was a certificate man, yet if he had come to this by act of law it would have gained him a settlement; and I believe it has been so determined in cases of purchase too. I think the same construction has been made on this act as upon 13 & 14 Car. II. In the following term, in *Rex v. Deddington* (*Burr.* S. C. 220,) it was held, that a purchase by a certificate man for 42*l.* gained a settlement expressly on the authority of *Burclear v. Eastwoodhay*. Lord Lee, C. J. says, 'The purchase was most plainly neither of the two cases mentioned in the act;' and he observes, 'a purchase was a matter of as much notoriety, or more, than the renting of a tenement of 10*l.* a year; that the construction ought to be agreeable to that put on 13 & 14 Car. II., under which any man is irremovable from a tenement of his own, and that if the construction was different, a person could not gain a settlement by a purchase of 5000*l.* per annum.' In *Rex v. Cold Ashton* (*ante*, 800,) the estate came to the husband, not by his own act, but by operation of law, (a) and it should also be remembered that though a man may not be removable from his own, it does not follow that he will gain a settlement. In *Rex v. Long Wittenham* (2 *Bott*, 531,) the estate came to the pauper by her husband's death. [His lordship then referred to the judgments of *Ashhurst* and *Buller*, Js. in *Rex v. Warblington* (*ante*, 723), to show their impression as to the construction of 8 & 9 Will. III., and adds,] These two learned judges must have been satisfied that there was a material distinction between a case where the estate was obtained by purchase, and where it was obtained by a voluntary gift. We do not feel ourselves bound by these decisions to

(a) See also *Rex v. Wivelingham*, *ante*, 696.

put a construction upon the act at variance with the plain import of the words. It is clear these cases proceeded upon a misapprehension of the precise point decided in *Burclear v. Eastwoodhay*. The other reasons assigned in giving their judgments do not appear to us satisfactory; they seem to us to turn upon the notoriety of the purchase. There is no question whether a certificated person would be removable during the time of his living in the parish and being the proprietor of an estate, but whether he acquired a settlement; and with respect to the similarity of construction to be put on this statute, as on the 13 & 14 Car. II., it is to be observed that the words are very different; and that looking at the recital in the latter statutes, which applies to poor persons going from one parish to another, and endeavouring to settle themselves where there was the best stock, and at the enactment which authorizes the removal of *such* persons only as are mentioned in the recital, it is clear that it never meant to apply to persons who had estates in the parish in which they came to settle. We think also no mischief will follow from the construction which we put on the 9 & 10 Will. III., for though, on the one hand, a certificate man would gain no settlement by the purchase of a large estate; on the other, he would be disabled from burthening the certificate parish, by making a purchase of an estate for a very small consideration, which he might have done prior to the 9 Geo. I. c. 7, s. 5. The other cases of settlements may be supported on the ground that the estate came by operation of law, as in *Rex v. Cold Ashton* (*ante*, 800), or by voluntary conveyance from another, as in *Rex v. Upton*, which perhaps may be considered as an estate not acquired by any act done by the party. We are, therefore, of opinion that the 9 & 10 Will. III. prevents any settlement by reason of an estate acquired by the act of the pauper, by a purchase in the ordinary sense of that word; but it does not prevent the acquisition of a settlement by reason of an estate devolving on the pauper by operation of law, or acquired by purchase, in the technical sense of that word." Order of sessions quashed. (See the observation of *Parke, J.* in *Rex v. Cassington*, *ante*, 799.)

1. *Acknowledgment of Settlement by Certificate.*

3. *Determined by Abandonment of the Certificate.*

Rex v. Taunton, St. Mary Magdalen, Burr. S. C. 402. Robert Bagg, grandfather of the pauper, came from St. James to St. Mary, Taunton, with a certificate, in 1702. He afterwards went back to St. James's, and there had a son, Robert, the father of the pauper. The pauper's father afterwards married, and lived in St. James's, apart from his father, and there the pauper was born. The grandfather died in St. James's. The pauper's father died, and the pauper was bound an apprentice by St. James's into St. Mary's, and there served his apprenticeship. And the court held, that the certificate was of no force at the time of the pauper's being put apprentice, but was then at an end. For in so long a course of time, and after such a desertion, we will conclude there was an end of it, and it ought to have been given up to St. James's. It is now of no more effect than if it had never been given. It was absolutely evaded and deserted; and the father and grandfather could not have gone to St. Mary's again without a new certificate. It is a good deal like the case of *Rex v. Sudbury*.

Absence for seventeen years, and dying *without* returning to certificated parish, is an abandonment of it.

Rex v. Frampton-upon-Severn, Doug. 418; Cald. 97. In 1751 Tretherne granted a certificate to Frampton, acknowledging Job Minett and wife to be settled at Tretherne. Under which certificate they lived in Frampton two or three years, when they voluntarily returned to Tretherne, and had afterwards a son, Samuel, born there. Job continued to live in Tretherne for seventeen or eighteen years, when, having a relation in Frampton dead, he went by himself (his wife being dead) to possess himself of the effects, and remained there about six months, when, being taken ill, he was by Tretherne recommended to Gloucester infirmary, and there died. Before he went to Frampton to take possession of his relation's effects, Samuel had been hired for a year, and served the same in Frampton, and so continued for several years until after his father died. Samuel, his wife and child, were the paupers removed from Frampton to Tretherne. It was urged, that

If the person certified return to the certifying parish, and there have a son, and the son hire himself to a person in the certificated parish, and there marry and have a family, that family is not within the certificate.

1. *Acknowledgment of Settlement by Certificate.*

If a certificated person go to the certificating parish, and there be hired to different persons for a year respectively, and serve accordingly, and then return to her brother, who is still residing under the certificate, it is no desertion of the certificate.

If the son of a certificated person leave him and go to the certificating parish, and there hire himself to and serve several persons, but gain no settlement there, and then return to the certificated person it is no desertion of the certificate.

in *Rex v. Taunton* (*ante*, 803,) the extraordinary length of time during which the certificate had slept was considered as a waiver of it, and that a voluntary removal of a certificated person will not vacate a certificate, and this without any regard to any interval or length of time. It was also urged, that if a pauper can by length of time desert or annul a certificate, by analogy to the statute of limitations, twenty years at least ought to be required. Here, the certifying parish did not look upon the certificate as at an end, for they recommended the father to the Gloucester infirmary. Lord *Mansfield* said, "The principle has been long settled of abandonment by disuse, at least it is to be found in the *Taunton* case." He then [after adverting to the facts of the father returning for a special purpose, after an absence of seventeen years,] added, "The question is, whether the son went to Frampton under the faith of the certificate? Certainly not. Frampton had never heard of him. He goes there as an emancipated son, in his own right. It shall not be said that he came under a certificate abandoned by his father before he was born, and *quo animo* the pauper returns to the certificated parish must always be considered." *Buller*, J. "It does not appear that the court, in the case of *Spotland*, meant to overturn that of *Taunton*. A mere going away, indeed, shall not avoid a certificate; but what absence shall have that effect is left open." *Willes* and *Ashhurst*, Js. concurred. Order of sessions confirmed.

Rex v. Keel, *Cald.* 144; 2 *Bott*, 605. Jane Peak was removed from Bedworth to Keel. Order confirmed. The pauper was born at Bedworth, where her father and mother resided under a certificate from Keel until their death; she remained there after their death until she was about seven years of age, with her brother (who was named in the certificate), and then voluntarily went to Keel, where she remained till she was fourteen, during which time she was maintained by Keel, and then she was hired for a year, and served the same, and also two or three others in Keel, when she voluntarily returned to her brother's house at Bedworth, and was afterwards hired to a person for a year, and served him at Bedworth. The question was, whether the pauper, after she returned to Bedworth, was to be considered as still under the certificate, or that under these circumstances it was to be considered as having been abandoned? Lord *Mansfield*, C. J. at first inclined to think that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate. But *Willes*, J. "thought that the inquiry here must be, whether the certificate was *functus officio*? The fact is, that the pauper returns voluntarily to the house in which she had before resided under the certificate, which belonged to her brother, who was at that time resident there under the certificate; it certainly was not discharged as to him, and there do not appear to me to be circumstances in the case sufficient to warrant us in saying that it was so with respect to the pauper." Lord *Mansfield*. "I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me." Both orders affirmed. (a)

Rex v. Ingworth, 8 *T. R.* 339. Order of removal of S. Slaughter from Ingworth to Erpingham quashed. Case:—In 1781, the father of the pauper went with his wife and the pauper, as part of his family, to reside in Ingworth, under a certificate from Erpingham. In 1787 the pauper, then sixteen years old, let himself to J. Brettingham, of Erpingham, and served two years as a yearly servant. He then let himself to W. Clarke, of Erpingham, and served him as a yearly servant for a year. He afterwards let himself from three days after Michaelmas following to M. Kemp, of Brickling, farmer, and completed his service. At the expiration of the year he returned to Ingworth, where his father still resided under the certificate, and lived in his father's

(a) In *Rex v. Heath*, 5 *T. R.* 586, Lord *Kenyon* remarked that "in *Rex v. Keel*, Lord *Mansfield's* first thoughts were best: he afterwards gave way to what was suggested, but it was generally thought he did so without sufficient grounds." In 3 *B. & Ald.* 380, Lord *Tenterden* said, "I cannot agree to *Rex v. Keel*."

house about a month, during which time he worked as a day-labourer at Brickling, and paid his father for his board. When he returned to Ingworth, he did not consider himself as going with a view to a certificate. At the expiration of the month he let himself for a year to B. N. of Ingworth, and lived in his service two years. Lord *Kenyon*, C. J. "Although the distinctions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question, we ought to be governed by it. Now it appears to me that *Rex v. Keel* (*ante*, 804,) is exactly like the present: there, indeed, Lord *Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate; but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order could have applied; but here is no ground for presuming as in *Rex v. Newington* (*infra*) that the parties had abandoned this certificate; for the pauper's father was resident at Ingworth under the certificate when the son returned to him." Lord *Blanc*, J. mentioned *Rex v. Collingbourne Ducis* (4 T. R. 199), the principle of which he said applied to the present case. Order of sessions quashed. (See *Rex v. Morley*, 2 M. & Sel. 417, *ante*, 309.)

Rex v. Newington, 1 T. R. 354. John Small, &c. removed from Newington to Mersham. Order quashed. Case:—The pauper's father resided at Newington under a certificate from Mersham, when the pauper was born: the father removed with his family to Hoo, and stayed there two years; and from thence removed with his family to Strood, where he continued four years, when he died: about two years after the death of the father, his widow went to Newington to keep her uncle's house, with whom she continued until his death, and afterwards lived at Newington till she died; she had been relieved by Newington, having gained a settlement there after her husband's death: the pauper within a year after his father's death went to Newington and hired himself for a year, and served the same in Newington, and continued with the same master another year; and then was two years with the minister of Newington, and never gained a settlement elsewhere. Lord *Mansfield*, C. J. "It is admitted that there may exist a case in which a certificate shall be considered as *functus officio*. Then the court ought to draw a line; in doing which it will be material to consider what is the nature of a certificate. It seems to me that a certificate given by the parish from which the pauper goes to another parish, is an indemnity to that other parish from the consequences of permitting him to reside there; therefore it has done its office the moment that residence is permanently at an end. A temporary absence for a particular purpose will not discharge it; but when the pauper has left the certified parish for years, and neither party has had any reliance upon the certificate, then it has done its duty, and has no longer any operation. In the present case, the pauper had left the certified parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged." The other judges gave their opinions to the same effect; and *Buller*, J. said, "That whenever a pauper returns to the certified parish again, they should require from him a new certificate." Order of sessions affirmed.

In *Rex v. St. Michael's, Coventry*, 5 T. R. 526, the certificated man left the certificated parish, and returned to his own parish, together with all his family, and there took a house, and resided there for two years, during which time the pauper was born; at the end of two years he and his family returned to the certificated parish, after which he returned to his own parish, and made it his permanent residence; and the question was, whether this were a desertion of the certificate? Lord *Kenyon*, C. J. acknowledged the law to have been settled by *Rex v. Newington* (*supra*), that a voluntary removal from the certificated parish, where the residence there is permanently at an end, will put an end to a certificate. He said that he understood a temporary removal to be where the person goes from the certificated parish to make a visit elsewhere, or on occasional business, leaving his family behind him in that parish, as being the place of his domicile. On the ground therefore that the certificated man left the certificated parish, not for a temporary pur-

1. *Acknowledgment of Settlement by Certificate.*

Whenever a certificated person leaves the certificated parish, without any intention of returning, the certificate is at an end.

A temporary removal is where a person goes from the certificated parish elsewhere on a visit, or on occasional business, leaving his family behind him in that parish as his domicile.

1. *Acknowledgment of Settlement by Certificate.*

Certificate discharged by an order removing the pauper.

pose only, but with a view of making the certificating parish the place of his permanent residence, he considered the certificate to have been discharged. The other judges agreed.

4. *Determined by Order of Removal.*

Rex v. Sudbury, Burr. S. C. 373. Thomas Bladen came by certificate from Sudbury with his wife and children to Uttoxeter. Thomas died there, and his wife and child John became chargeable, and were removed to Sudbury. About a year after, John was bound apprentice to T. B. of Uttoxeter, and served out his time there. *Ryder, C. J.* "The question is, whether the pauper is to be considered as a certificate man now, since 9 & 10 Wil. III. c. 11. We are all of opinion, that the removal of the pauper did restore him as fully as if there had been no certificate at all. The certificate was *functus officio*, after this order of removal to the parish which gave it. It can have its effect but once, and therefore after his removal back again, it can have no further effect. The intention of the certificate is to secure the parish in case the pauper should be chargeable. Now this event did fall out, and they were accordingly removed. The law is so far from looking upon a certificate as continuing after an order of removal, that the pauper cannot return to the place from which he was removed without incurring a penalty. It is said, that the construction contended for would destroy the certificate. But it does not destroy it, any otherwise than by satisfying it. And there is no absurdity in its being satisfied as to one, and remaining in force as to another. In *Sowerby v. Halifax* the pauper was not removed by any order." Order quashed.

Rex v. Bridham, Cald. 500; 4 Doug. 245. George Eaurcher was removed from Bridham to Walberton. Order quashed. Case:—The father of the pauper, about thirty years ago, went by certificate from Bridham to Walberton, where the pauper was born three or four years after. His father went to several other parishes after, and to each with a certificate from Bridham. From one of these an order of removal was made for him and his five children (he having only five) to Bridham. The pauper, being then in employ, was not removed with his father, but went to him in Bridham two or three days afterwards, and there lived six months as part of his family, and then being about sixteen years of age, he bound himself to E. N. at Walberton, and served him there the greater part of the time, and particularly the two last months. *Lord Mansfield*: "I think the original certificate was discharged by the following certificate; but if that is doubtful, I am clearly of opinion it was discharged by the order of removal." Order of sessions quashed.

5. *Determined by a Certificate to another Parish.*

A second certificate to a pauper discharges a former one given by the same parish.

Rex v. St. Peter, Derby, 1 T. R. 218. Order of removal of Benjamin Pratt, &c. from St. Peter, Derby, to Chaddesden, quashed. Case:—The pauper, on the 5th November, 1751, was bound an apprentice for seven years to Joseph Pinn, of All Saints, in Derby, to which place Pinn had a certificate from Smalley; the pauper served his master in All Saints about five years and a half; and the master and his family, at Lady-day, 1757, removed to Chaddesden, where he resided till 14th January, 1758, when Smalley granted Pinn, the master, a certificate. Between Lady-day, 1757, and 14th January, 1758, the pauper served his master upwards of forty days in Chaddesden. Pinn never returned to All Saints, but continued at Chaddesden under the certificate; but the pauper returned to All Saints in the summer of 1758, and served his master there upwards of forty days after Smalley had granted the certificate to Chaddesden. The only question was, whether the second certificate to Chaddesden discharged the former one to All Saints, they having both been given by Smalley? The court being of opinion that this question was determined by *Rex v. Birdham* discharged the rule. Order of sessions affirmed. (The question decided in *Rex v. Leeds* (post, 809,) was not raised in this case. See the observation of the chief justice.)

12. *Removal of Certificated Persons.*

In *Rex v. Framlingham*, Burr. S. C. 748, Aston, J. said "That if several persons reside in a parish under the same certificate, the asking relief by a single one of them would not render the rest removable. The certificate act says that the parish who gives the certificate shall receive and provide for the person mentioned in it, together with his family, whenever he or they shall happen to become chargeable or ask relief; and then, and not before, it shall be lawful for any such person, and his or her children, to be removed to the parish from whence such certificate was brought. And it must be adjudged by the justices that such person has actually become chargeable before they can legally make an order of removal. Now how can the justices be authorized to make such an adjudication upon a person who in fact is not become chargeable nor ever has asked relief?" (See also *Rex v. Kingswood*, Burr. S. C. 392, and *Rex v. Haydon*, 2 Bott, 717.)

Rex v. St. Mary, Westport, 3 T. R. 44. T. P. and family were removed from B. to W. They went to reside in B. under a certificate from W., where the eldest son afterwards married, and lived apart in the same parish, and during sickness received (as did his infant son after his death) relief from the parish of B., with the knowledge of T. P., who had never himself, or any part of his family residing with him, asked relief. It was contended that they were irremovable because not chargeable. Lord Kenyon, C. J. "Although this certificate is not in the usual form, yet as far as it relates to the question now before us, it must be considered as a common certificate: and the single question is, whether these persons who have been removed can, in the fair sense of the words, be said to have been actually chargeable to the parish? Now it is negatived by the case that any of these parties receive relief in person. But it is contended that they were *virtually* relieved, because the son and the grandson both received relief. But it must be observed, that at that time they were not members of the family of the *pater-familias* now removed; they lived apart from him, and formed another family of themselves. Then it has been said that a burthen has been thrown upon the parish by the relief of the son and grandson, and therefore that the grandfather was *virtually* chargeable, because the 43 Eliz. requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not *in all events* to maintain their children, &c., but only when they are of sufficient ability. Now the justices are the proper judges of that ability; and the grandfathers, &c. are only to be called upon by an order of justices."

Rex v. St. Martin at Oak, 16 East, 303. The pauper, T. Gardener, in 1775, obtained a settlement in Felthorpe, and subsequently a settlement in Drayton. In 1787 Felthorpe granted a certificate to the parish of St. Martin at Oak, where the pauper continued to reside under this certificate, occasionally receiving relief from the parish of F. until 1812, when he was by order removed to F.; from this order the parish of F. entered an appeal. The parish of St. Martin then withdrew the order, and the pauper was removed to Drayton. The question for the opinion of the Court of King's Bench was, whether St. Martin at Oak were not bound to remove him to F., the certifying parish under the 8 & 9 Will. III.? But the court were clearly of opinion that the act was not restrictive of the power of removal from the parish to which the certificate is granted, to any other parish, but only conclusive upon the certifying parish, as between that and the parish to which the certificate is granted. This was considered to be the object of the act in *Rex v. Lubbenham* (*ante*, 769), and in a prior case of *Rex v. St. Giles* (2 Salk. 530.) All the authorities agree that it signifies nothing when the certificate was granted; it is only an estoppel upon the parish granting it as between the two parishes. Order of sessions quashed.

1. *Acknowledgment of Settlement by Certificate.*

12. *Removal of Certificated Persons.*

Of a certified family, those only can be removed back that ask relief.

The chargeability of the son does not render the father removable.

A pauper may be removed from a parish where he is residing under a certificate, to a parish in which he gained a settlement before the granting of the certificate.

1. *Acknowledgment of Settlement by Certificate.*

13. *Of Apprenticeship under Certificate.*

Apprentice of an uncertified man serving a certificate man, can gain no settlement thereby in the certificated man's parish, where the service is performed.

Apprentice to a certificate man serving an uncertificated person in the same parish, gains no settlement there.

13. *Of Apprenticeship under Certificate.*

A person bound apprentice, or by hire as a servant, to one who came into the parish by certificate, shall not gain a settlement. 12 Anne, st. 1, c. 10, s. 2. (See statute, *ante*, 457.)

Romsey v. St. Michael's, Southampton, Burr. S. C. 640. S. Bishop was bound an apprentice to W. Kearley, of All Saints, for four years, and served him there for three years. It was then agreed between them and S. Dagnell, residing in Romsey under a certificate from St. Giles's in Reading, that Bishop should work with Dagnell the remainder of his apprenticeship, for which Kearley was to receive 2s. a week. Bishop accordingly served him and resided with him in Romsey. The question was, whether the apprentice gained a settlement by this service in Romsey? Lord Mansfield, C. J. "This question is plainer than any argument can make it. The end and intention of the act was to prevent certificated persons from bringing a charge upon the parishes into which they came by certificate. How then can it be imagined that another man's apprentice should gain a settlement by serving him in that parish, when his own apprentice is made incapable of doing so?" And the court were unanimously of opinion that the apprentice gained no settlement in Romsey. (See *Rex v. Hardwicke, ante*, 296, and *Rex v. Hugate, ante*, 302.)

Rex v. Hinckley, 4 T. R. 371. The pauper, J. Farborough, at nine years old, was bound a parish apprentice to D. Palmer, of Hinckley, who was residing there under a certificate from Copson. The pauper, after serving part of his time with Palmer, was assigned by him to J. Hurst, a parishioner of Hinckley, under an agreement that Hurst was to pay 1s. a week to Palmer, and which was paid accordingly. He served Hurst in Hinckley above forty days before he left him. Lord Kenyon, C. J. delivered the judgment: "The question is, whether any settlement was obtained by the apprentice by his service under his second master, who was a parishioner of Hinckley, in which parish his first master, by whom he was assigned, had been certificated to? The first impression made upon my mind was, that as the last forty days of the apprenticeship was served under a person who was not under the disability of the certificate, such service gained a settlement; but upon looking more fully into the authorities cited, on which I had formed my first opinion, and advertg more particularly to the words of the statute of Anne, I am disposed to think that a settlement was not acquired by the service under the indenture of the second master in Hinckley, although he were not residing there under the certificate. And that opinion which we have formed, proceeds principally on the words of the statute of Anne, and the view with which it was passed. By the general tenor of the certificate act, persons settled in one parish, bringing a certificate with them into another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted cannot refuse to receive them. But the mischief was, that though the certificated persons themselves could not gain a settlement in that parish, yet they were the means of conferring settlements on others, by taking servants and apprentices, which was thought to be a great hardship on those parishes who were bound to receive them under the certificate. Therefore, to provide against that inconvenience, the 12 Anne, c. 18, s. 2, was passed. There has never been any precise determination on this point; and therefore we think it better to abide by the words of the act, from whence the intention of the legislature can best be collected; and the act having expressly provided that persons bound apprentices to certificated men shall not *by virtue of such apprenticeship, indenture, or binding*, gain a settlement in *such parish*, it is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained there by virtue thereof; for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish. As to *Rex v. Petham (ante*, 797), where it was held, that the apprentice of a master, certificated to Tenterden, might gain a settlement under an assignment to a second master

residing at Lidd, which was a third parish; that does not govern the present, because it does not interfere with the policy of the statute of Anne; for the parish of Lidd had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover Hinckley in the broadest manner, to prevent any burthen coming on that parish on account of their obligation to receive the certificated person. The other case principally relied on (of Romsey parish) has no application to the present question; for though it was contended generally at the bar, that the statute of Anne was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original masters, yet the court by no means adopted that argument, but decided rather on the ground that no settlement could be gained by the apprentice, through the medium of a certificated person in that parish. Therefore as there has been heretofore no determination on this point, as the statute of Anne was passed for the express protection of the certificated parish, and as the words of the act are very particular and positive in favour of that parish, we see no reason to restrain the meaning of them to a service with the original master." Both orders quashed.

Rex v. Leeds, 1 Nev. & M. 650; 4 B. & Ad. 248. Appeal against an order of justices removing N. Bowles and family from Horton to Leeds. Order confirmed. Case:—The pauper's father was settled in Leeds. In 1809, the pauper being about thirteen years of age, was bound apprentice by his father for seven years to Joseph Fox, shoemaker, who was then residing in Horton under a certificate from a Friendly Society. Four years after the indenture was made, Fox took a farm for a year in Horton at 40*l.*, which he occupied for the year. The pauper continued to serve his master for seven years from the date of the indenture. The sessions being of opinion that the pauper had not gained a settlement by such apprenticeship, confirmed the order. *Cur. adv. vult.* Denman, C. J. "The question in this case was, whether a pauper had gained a settlement in the parish of Horton. The pauper was bound apprentice to a master who was at that time residing at Horton under a certificate from a friendly society; but before the term of apprenticeship expired, the master gained a settlement in Horton by renting a tenement, and the pauper served him under the indenture of apprenticeship more than forty days after that time. The question turns upon the proper construction of the 33 Geo. III. c. 54, s. 24, by which it is enacted 'that no person who shall be an apprentice bound by indenture to any person who did come into or shall reside in any parish, township or place under the authority of this act, and *not afterwards having gained a legal settlement in such parish, township or place*, shall gain or be adjudged to have any settlement in such parish, township or place, by reason of such apprenticeship or binding; but all such apprentices shall have their settlements in such parish, township or place, as if they had not been bound, any act or acts of parliament to the contrary notwithstanding.' The words are copied nearly verbatim from 12 Anne, stat. 1, c. 18, s. 2, which act has received a judicial construction in the case of *Rex v. Hinckley* (4 T. R. 371, ante, 808), by which case we think we are bound. That case differs from the present in one circumstance only, viz. that in that case the pauper having been bound to a certificated man, was afterwards assigned to another person in the same parish, who was under no disability, whereas here the pauper continued with the original master after his certificate was discharged. But the reasons given by Lord Kenyon in delivering the judgment of the court, which was evidently much considered, apply to the present case as much as to that; and we cannot decide in this case that the pauper gained a settlement without overruling *Rex v. Hinckley* (4 T. R. 371). The words of the statute are plain, that an apprentice *bound* to a man who did come into or shall reside in a parish under a certificate, and *not afterwards having gained a settlement*, shall not by such apprenticeship or binding gain a settlement in that parish, but shall be as if he had not been *bound*. Now the words 'not afterwards having gained

1. *Acknowledgment of Settlement by Certificate.*

Under the statute 33 Geo. 3, c. 54, s. 24, (which is in substance the same as 12 Anne, stat. 1, c. 18, s. 2,) an apprentice bound to a person residing in a parish under a certificate cannot gain a settlement by such apprenticeship, though the certificate be subsequently discharged and he afterwards continue to serve his master in the parish for forty days. The binding, to confer a settlement, must be such as would at the time be effectual for that purpose.

1. *Acknowledgment of Settlement by Certificate.*

a settlement,' are grammatically to be referred to the preceding words 'come into or reside,' and manifestly point to the situation of the master at the time of binding. If the master be residing under the certificate at the time of the binding, no settlement can by possibility be acquired by the apprentice in the certificated parish, notwithstanding a subsequent removal of the master's disability; but it is otherwise if the binding is after the discharge of the certificate, where the master has gained a settlement in the certificated parish. Lord *Kenyon* says 'It is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained *there* by virtue *thereof*, for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish.' Here according to this opinion the binding was not, at the time it took place, such as would be capable of conferring a settlement, nor could any subsequent circumstances make the binding more efficacious, whatever effect they might have on the service; the consequence is, that the pauper remained as if he had not been bound, and gained no settlement at Horton. The case of *Ivinghoe v. Stonebridge* (1 Str. 265) was pressed in argument; but in that case the service expired before the passing of the statute of Anne, and besides the original binding was not to a certificated person and was free from all objection. The case of *Rex v. St. Peter's, Derby* (1 T. R. 218, ante, 806,) was also pressed. It is sufficient to say, that in that case the present question was not presented to the court, but it was decided without argument on the sole point whether one certificate was discharged by the granting of another, and the case was also prior to *Rex v. Hinckley* (4 T. R. 371, ante, 806). Neither does our opinion militate against the case of *Rex v. Nacton* (3 B. & Ald. 543, ante, 601,) decided in Easter term last, for that case proceeded entirely on the ground that the master never did reside under the certificate, but came into the parish in a condition to obtain a settlement. Upon the whole, we are of opinion that the case of *Rex v. Hinckley* must govern the present decision, and that the order of sessions must be affirmed." Order of sessions affirmed.

A settlement by apprenticeship can be gained by a party who is one of the family of the certificated person, only by a *binding* and *inhabitation* after he is *sui juris*.

Rex v. Manningtree, 6 M. & Sel. 214. Order of removal of W. Finch from Manningtree to Culphoe quashed. Case:—The pauper was born in Manningtree, where his parents were residing under a certificate from Culphoe. When he was nineteen years of age and upwards, he was duly bound apprentice to R. Hobson, of Mistley, for three years, to serve on board his vessel engaged in the coasting trade from Mistley to London. He served his master for two years and then ran away, the vessel then being at Mistley. Eight months previous to this he became twenty-one, during which eight months he slept at his father's in Manningtree for more than forty nights, with his master's consent, his master having no room for him. He slept at his father's the night before he ran away. Whenever the vessel was at Mistley the pauper uniformly slept at his father's. No evidence was offered of a settlement gained by the pauper in any other parish. He was not married, nor had his father done any act to discharge the certificate. The sessions thought a settlement had been gained in Manningtree. Lord *Ellenborough*, C. J. "It has occurred to this court, upon reference to the 3 W. & M. c. 11, which requires a binding as well as inhabitation, in order to confer a settlement, for the words are, 'such binding and inhabitation,' that in a case like the present, where the pauper is to be withdrawn from the effect of a certificate, and placed in a condition to acquire a settlement in the certificated parish, by some act clearly indicative of his being *sui juris*, the binding must be for this purpose after he has attained his full age. It is plain the binding here was before he was of age; and that seems to make an end of the question." *Bayley*, J. "It is clear, I think, that a settlement could not be gained in Manningtree by this pauper by means of a binding and service there whilst he was under age. A settlement in that parish could only be acquired by him after he became *sui juris*; and as it regards a settlement by apprenticeship, the act of binding as well as inhabitation, ought to be one entire act after he was of age, and not an act in part com-

mencing during his nonage. The binding therefore ought to have been after he was twenty-one. In this lies the distinction between this case and *Rex v. Morley* (*ante*, 309), because a hiring and service concurred there after the pauper was of age. This decision will not militate with former cases. The court does not say that where a settlement in the certificated parish is not in question this doctrine will apply; if the question here were upon the effect of this binding coupled with a service in a third parish, the court does not pronounce that the pauper would not have acquired a settlement there. For instance, let the binding be in A., the service in B., and let the apprentice sleep in C., in that case the settlement would be in C.; yet if C. be the certificated parish, then, unless the binding and sleeping be entire after the pauper be of age, he does not acquire a settlement in the parish C. This, I apprehend, is the distinction on which the court means to decide the case." *Holroyd, J.* "The son of a certificated person included in the certificate as part of his family, can only gain a settlement in the certificated parish when he is *sui juris*. Under 3 W. & M. c. 11, two things are requisite to confer a settlement by apprenticeship, viz., binding and inhabitancy. By analogy to that statute, when the question regards a settlement in the certificated parish, both these must concur after the party is of full age, so as to make an act *sui juris*. If the apprentice had been bound when he was of age, and had served afterwards, *Rex v. Morley* (*ante*, 309,) would have been in point." Order of sessions quashed.

Rex v. Queenborough, 2 Bar. & Adol. 219. Appeal against an order of two justices removing J. Webb from the parish of Milton to Queenborough. Order confirmed. Case:—In the year 1775 the parish of Queenborough granted a certificate for Robert Webb, the pauper's grandfather, and several individuals of his family by name, to the parish of Milton next Sittingbourne, under which certificate William, one of the persons named, the father of the pauper, has continually from that time hitherto resided in Milton. On the 10th of July, 1810, the pauper, then being about eleven years of age and residing as part of his father's family under the certificate, was bound without any premium, an apprentice to his father's brother, Daniel Webb, an inhabitant of Milton, as a dredgerman, for the term of ten years. His master covenanted in the indentures of apprenticeship to find him in board, lodging and clothing, and to instruct him in the art and business of a dredgerman, and he continued to serve under the indenture until January, 1818, when his master and his family became chargeable to the parish of Milton. The master having originally resided under the above certificate, and not being then supposed to have acquired a settlement in Milton, was with his family removed to Queenborough, but on arriving there and an explanation taking place, this order was abandoned. The pauper was afterwards, by another order of removal bearing date the 5th of February, 1818, removed to Queenborough, which parish acquiesced in his removal, and received him as their parishioner. The pauper stayed at Queenborough about a week, and then returned to Milton to the said D. Webb, and continued with him there under circumstances which amounted to a service and residence of forty days under the indenture subsequently to his return. He never gained a settlement in any other parish. The question for the opinion of the court was, whether the pauper gained a settlement in the parish of Milton by the above binding and the service performed after his removal to Queenborough. Lord Tenterden, C. J. "The binding in this case having been before the pauper attained his full age, is not distinguishable from that in the case of *Rex v. Manningtree* (6 M. & S. 214, *ante*, 810), where it was held no settlement was gained in the certificated parish. That case must govern our decision in the present instance, unless we can say that a binding which was not available at the time it was made, can be rendered so by matter *ex post facto*. I cannot think that any subsequent act of the parish can have the retrospective effect of making that binding effectual by relation which was not so at the time when it was entered into. The safest course is to adhere to the decision in *Rex v. Manningtree* (*ante*, 810)." *Littledale, J.* "No subsequent act of the certifying parish will make the binding valid for

1. *Acknowledgment of Settlement by Certificate.*

Son of a pauper living in a parish under a certificate will not gain a settlement there by apprenticeship, unless both the binding and inhabiting take place after he is of age.

1. *Acknowledgment of Settlement by Certificate.*

Apprentice bound and serving twenty-two days before the execution of a certificate, gains no settlement, though he continues three years after.

Apprentice to a man who had a certificate, but which was not delivered till after the apprenticeship, may gain a settlement by such apprenticeship.

An apprentice resided generally, and the last night, in the certificated parish, but he also resided more than forty days in L.: Held, he gained no settlement in L.

the purpose of conferring a settlement in the certificated parish, which was not so at the time when it was made." *Parke and Patteson, Js.* concurred. Order of sessions confirmed.

St. Cuthbert's v. Westbury, Burr. S. C. 470. A person was bound apprentice to a man residing at Westbury, but whose settlement was at Harptree, a neighbouring parish. After the apprentice had served twenty-two days, the master obtained a certificate from Harptree, and delivered it to the overseers at Westbury; and the apprentice served there further with his master for three years. The question was, whether the apprentice hereby gained a settlement in Westbury? By the court: "Before the act, the serving under an apprenticeship to a certificated man for forty days in the parish where the master lived, would have gained a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person *residing under a certificate*, he shall not thereby gain a settlement. Now here is no service for forty days under an apprenticeship to a master who did not reside in this parish under a certificate; therefore the apprentice in this parish did not gain a settlement. But it would have been otherwise if he had served forty days before his master became certificated."

Rex v. Wensley, 5 T. R. 154. The pauper was bound apprentice to R. Hallam, of Chesterfield, with whom he continued two years. Before the pauper was bound to Hallam, the overseer of Chesterfield told Hallam he must procure a certificate or they would remove him; he accordingly before such binding of the pauper procured a certificate from Chaddesden, directed to Chesterfield, but nothing further passed between Hallam and the overseers of Chesterfield respecting the certificate, after their first requisition to him to procure one; he therefore not being again called upon, did not deliver the certificate to the overseers of Chesterfield, and it remained in his hands without mention or further notice during the whole time that the pauper served him as his apprentice at Chesterfield; but some time after the pauper left Hallam, the certificate was delivered by Hallam to the overseers of Chesterfield. Lord *Kenyon, C. J.* "We cannot depart from the express and positive words of the act, which are decisive of this question. In the construction of some statutes, the courts have thought, from considering the context and the words of it, that some particular words are merely directory; but there is nothing in this statute to show that the words commented upon should be construed to be directory only. The statute says expressly that 'if any person shall come into any parish, &c., he shall *at the same time procure, bring, and deliver* to the churchwardens, &c., of the parish where such person shall come to inhabit, a certificate, &c.; the *act therefore requires a delivery at the time when the pauper goes into the certificated parish*; and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. *Rex v. Buckingham (ante, 795,)* only decided, that a certificate, though not delivered, was an acknowledgment by the parish granting it, that the pauper was settled with them when it was given, but it did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted." Both orders quashed.

Rex v. Rustington, 6 M. & Sel. 396. Order of removal of J. Mitchiner from Newhaven to Rustington confirmed. Case:—The pauper was included by name in a certificate given in 1763 by Rustington to Newhaven. While residing under it he was bound apprentice to a lighter-man in Newhaven, and served the seven years. During the greater part of the apprenticeship, and on the last night of it, the pauper slept at Newhaven; but in the course of his master's employment, he went up and down the Ouse to Lewes in his master's barges. He was frequently detained at Lewes two or three days together, but not more at any one time; and, when so detained, he slept either at an inn in St. Thomas à Becket, by the cliffs near Lewes, or on board in his master's barge, while it lay in the same parish. He slept in that parish more than forty nights in the seven years, but not forty nights in any

one year. (a) Lord *Ellenborough*, "Had it not been for the certificate, the settlement would have been at Newhaven, because that is the parish where the pauper slept the last night of his service. The certificate prevents this; but why is that to place a third parish in a worse situation? There was nothing like a permanent residence in St. Thomas à Becket to constitute an abandonment of the certificate. *Bayley, J.* "The law on this branch of the settlement is, that an apprentice is settled in the parish where he sleeps the last night of his apprenticeship, if he has slept there altogether during the year for forty nights. According to that law the pauper would have been settled in Newhaven were it not for the certificate. How then is the certificate, which is in the nature of a bargain between two parishes, to vary the case as it regards a third parish, and in the present instance to throw a charge on St. Thomas à Becket, which, otherwise, they would not have to bear? In *Rex v. Great Torrington* (*ante*, 798,) the certificate was completely discharged by a settlement gained in another parish by apprenticeship. But when was this certificate discharged?" *Abbott, J.* "The *Rex v. Spotland* (b) certainly gives colour to the argument of to-day, which would maintain that a settlement was acquired in St. Thomas à Becket, for the two cases are in circumstances very similar. But I cannot help thinking that the court there were under some misapprehension of the terms of the statute, for it also says, "that the apprentice shall have his settlement in such parish, as if he had not been bound apprentice to the certificated person." *Holroyd, J.* "The argument would place a third parish in a worse situation than if a certificate had not existed." Order confirmed.

1. *Acknowledgment of Settlement by Certificate.*

12. *Of Settlement by Acknowledgment; viz. by Relief.*

It is a presumption of law, that a parish will not extend relief to a pauper, at least when out of such parish, unless it is under an obligation to do so, by the pauper being settled in such parish. Wherever, therefore, such relief has been afforded, except in the case of casual poor, it has been considered to be an acknowledgment that the pauper is settled in that parish. Whether the parish institutes any inquiry as to the settlement at the time, or has the means of ascertaining the fact, is not very material, if the relief be given in a manner, and under circumstances which fairly lead to the conclusion, that it was given because it was felt and believed that the pauper was settled in

12. *Of Settlement by Acknowledgment, viz. by Relief.*

(a) Residence for forty days during the term would have been sufficient, *Rex v. Aldstone*, 2 B. & Ad. 207 (*ante*, 584.)

(b) *Rex v. Spotland*, Burr. S. C. 527. The pauper, John Hamer, was bound apprentice to a certificated man at Castleton, and after some years removed to Spotland, where he served him forty days, and then married; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the day-time with his master in Spotland, but lodged with his wife at Castleton. By the court: "The master, who was a certificated man at Castleton, gained no new settlement in Spotland; and the pauper still remained an apprentice to this certificated man. The master may still go back to Castleton, the parish to which he was certificated. Indeed, it hath been determined, that if a certificated person goes to another parish, and

becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force: the certificate subsists, and the apprentice remains part of his master's family. He was so at Spotland; and all along continued to be so. The certificate act says, that the apprentice shall not gain a settlement in the parish to which his master came by certificate. But as this apprentice hath gained an intermediate settlement, he ought to be sent to that settlement which he hath intermediately gained." And the court were unanimous that his settlement was at Spotland. But N. B. *Rex v. Spotland* is considered as overruled by *Rex v. Rustington*, 6 M. & Sel. 390 (*ante*, 812).

12. *By Relief.*

such parish. At the same time the parish is not thereby absolutely precluded and estopped from disputing the settlement, as the fact of giving relief only shows the *opinion* of the parish that the pauper was settled with them.

It has been supposed, that the mere circumstance of parish officers having relieved a pauper in their parish, affords *prima facie* evidence that he was settled there; but the rule is now clearly otherwise, and the affording such relief is now considered *as no evidence whatever* against the parish (see *Rex v. Coleorton*, 1 B. & Ald. 25, *infra*); but affording relief to a pauper *out* of the parish is evidence against such parish (*Rex v. Edwinstowe*, 8 B. & C. 671, *post*, 817).

The bare fact of receiving relief while in a parish is no proof of settlement in that parish.

Hearsay no evidence of the fact.

Not even when relief was given many times.

Rex v. Chadderton, 2 East, 27. Removal of John Buckley from Little Bolton to Chadderton confirmed. Case:—The pauper, when he buried his first wife, applied to, and received relief from, the overseers of Chadderton, and the pauper's mother being with child of a bastard, some few years after his father's death, went from another township to Chadderton to lie in there, and "as the pauper had heard from his mother," who has been dead some years, she was relieved there by Chadderton. This hearsay evidence was objected to, but received. Lord *Kenyon*, C. J. "The hearsay from the pauper's mother is no evidence at all of any fact, and then the only fact applicable to the settlement in C. is, that when the pauper buried his first wife he received relief there from the overseers: but the bare fact of his receiving such relief is no evidence of a settlement, as they might have been relieved as casual poor. If the paupers were in want of relief while they were in C. the overseers were bound to give it, whether the paupers were settled there or elsewhere; and by the 35 Geo. III. c. 101, they could not have been removed till they were actually chargeable." Case remitted.

Rex v. Chatham, 8 East, 498. Removal of Sally Burgoyne, widow, from Ashford to Chatham, confirmed. Case:—The pauper was married to Robert Burgoyne in Clerkenwell. A considerable time after their marriage her husband went to live at Chatham. Her husband more than once received relief from Chatham: he was at one time a fortnight, at another a longer period in the workhouse of that parish, on account of illness; and he died in that workhouse, and was buried at the expense of the parish. During all these times of relief he was resident in that parish. Lord *Ellenborough*, C. J. "On subjects of this sort, it is important there should be one uniform rule, as far as is consistent with law; and the rule having been laid down by Lord *Kenyon* in *Rex v. Chadderton* (*supra*), that the bare fact of giving relief to a pauper within the parish was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. In that case, indeed, the relief was only administered once; and it becomes necessary to consider, whether its having been administered more than once, or several times, alters the case, and differs this in substance from the other; for each instance in itself might not be evidence of the settlement, and yet it might be difficult to say that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that though the relief were given for any length of time, the inference may either be, that the party receiving was a settled inhabitant, or that his settlement could not be known. But that would bring it to an alternative case, on which the sessions might draw their own conclusion, and the difficulty would still exist. Upon the whole, therefore, it appears to me, as the better rule to adopt, that it does not amount to evidence of the settlement. And there would be great impolicy in allowing it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves as to his settlement in their parish, it would make them perform their duty to casual poor with great reluctance. And therefore it is more consonant to humanity and policy, and to the rule of law laid down by Lord *Kenyon*, to say at once that it is no evidence of the settlement, than to leave it as a matter of inference in each case." Order of sessions quashed.

Relief given by a parish to a family

Rex v. Coleorton, 1 B. & Ald. 25. Joseph Allen, his wife and children, were removed from Merevale to Coleorton. Order confirmed. Case:—

The pauper's father died when the pauper was seven years of age, and left him residing with his mother in Coleorton, where, after her husband's death, she and several of her children were relieved during a long period, and while resident in the same parish. During this time, also, one of the children (the pauper's brother) was bound out by the parish of Coleorton into a third parish. But throughout the whole of the above time the mother of the pauper, with her children, received relief from the parish of Thringstone whilst they were resident (as before mentioned) in Coleorton; and the pauper's mother having died in that parish, was buried there at the expense of Thringstone. The sessions were of opinion that the relief by Coleorton preponderated over the relief by Thringstone, and confirmed the order.

Bayley, J. "If there had been evidence on both sides it would have been for the sessions to draw their own conclusion, and I should not be inclined to disturb it. But if there is evidence on one side, and the sessions act upon what is not evidence on the other, and then send the case to us, it becomes a fit subject for our adjudication. It is decided, and I think rightly, by *Rex v. Chatham* (*ante*, 814), that relief by the parish in which a pauper resides is no evidence of settlement. Lord *Ellenborough* there enters into the question, whether relief, administered in more than one instance, may not require a different consideration, but he concludes by laying it down as the best rule to abide by, that such relief, whether given once or several times, is not evidence. One powerful reason in support of this decision is the reluctance which parish officers would feel against relieving casual poor, if by doing so they were furnishing evidence against their own parishes. It is true that, in the present case, Coleorton has not only relieved the family, but bound out one of the children. The sessions, however, have not acted upon this fact *per se*, but upon the continued relief generally; and in my opinion, the binding is no more evidence against Coleorton than the other circumstances; for parish officers may apprentice out paupers, being within the parish, whether settled or not. *Rex v. Yarwell* (9 B. & C. 894) does not militate against our present decision. In that case the sessions formed their own judgment on the facts, and afterwards sent a case to us, not stating upon what point they doubted. We, therefore, would not interfere with the conclusion they had come to. But here was evidence on one side, and none on the other, and the sessions have determined that the no-evidence preponderated. *Littledale, J.* "The court having decided in *Rex v. Chatham* (*ante*, 814), that relief in circumstances like the present is no evidence, I think we ought to hold accordingly. The binding out of the child carries the case no farther, as the power of apprenticing does not depend upon the pauper being settled in the parish. *Parke, J.* "If this had been *res integra*, I should have had a difficulty in saying that the relief being continued was not evidence. But the contrary rule is so distinctly laid down in *Rex v. Chatham* (*ante*, 814), that we are bound to abide by it. As to the apprenticing, if the law had empowered parish officers to bind out settled paupers only, we might have sent the case back; but the statute of Elizabeth gives the power generally. The binding therefore is no additional proof, and the evidence on which the sessions decided was altogether illegal" Order of sessions quashed.

Rex v. Trowbridge, (a) 7 B. & C. 252; 1 M. & R. 7; 1 M. & R. Mag. Ca. 71. Order of removal of Matthew Acorn, &c., from Trowbridge to Chatham, quashed. Case:—The pauper's first recollections were of his being in the workhouse at Chatham. He supposed he might be then about four or five years old. He never knew his father, and his mother was not in the workhouse with him. He stayed in the workhouse till he was thirteen or fourteen, when he entered on board a man of war and served in various ships till

12. *By Relief.*

resident in it, is no evidence of settlement, though the relief be continued for a long period, and though one of the family be put out apprentice by the parish.

The fact of a poor child being first found in a particular parish, is no evidence of his having been born there. Nor does his being maintained by that

(a) Mr. *Starkie* has remarked on this case, "that the appeal was against an order of removal to Trowbridge and the justices at sessions quashed the order, but *quære*, whether, though they were not bound to act upon it, they might not

have acted on it." Lord *Holt*, in *Banbury v. Broughton* (*Camb.* 364), held, "that where a child is first known to be, that parish must provide for it till it find another." (2 *Stark. Ev.* 728, n.)

12. *By Relief.*

parish for several years, and occasionally relieved by them for several weeks together, amount either to an admission of his being settled there.

Semble, that relief given to a pauper is no evidence of his being settled in the relieving parish.

1814. He then went to Trowbridge, and married there. Being out of work at Trowbridge he went with his wife to the workhouse at Chatham, where he stayed more than three weeks, during which time he was maintained there by the parish of Chatham; and on going away was furnished by the parish officers of Chatham with 1*l.* in money, and a pair of shoes for him and his wife to return to Trowbridge. He returned, and remained there about ten years, when, being again out of work, he went to Chatham again with his wife and family, where he again stayed about three weeks in the workhouse; and while there was again maintained by Chatham, and received 1*l.* in money, and a pair of shoes for him, his wife, and each of his children, and provisions to return to Trowbridge; at the same time he was desired by the Chatham overseers not to return to Chatham again without an order or a pass. He then returned to Trowbridge, at which place he was afterwards relieved, and thereupon removed by order of the magistrates to Chatham. The parish registers of Chatham were searched by the pauper, but no entry was found of his baptism nor of any persons bearing his name. *Bayley, J.* "If the decision in *Rex v. Chatham* (*ante*, 814,) is law, which seems not to be denied, relief is no evidence of a settlement in the relieving parish; and then the sessions could not act upon the evidence of the relief by Chatham, and have come to the right conclusion, in holding that there was no proof of the pauper's being settled at Chatham. It does not, however, appear to me in the present case necessary to say the giving relief within a parish may or may not, under certain circumstances, be evidence, from which the sessions may conclude that the party so relieved was settled in the relieving parish; because, admitting that there was *some* evidence of a settlement at Chatham, the effect of that evidence was a question for the sessions to decide; and as they have decided it, and the facts of the case do not, in my opinion, show that their decision was wrong, I think we ought not to interfere to disturb it. The pauper is first found in the workhouse at Chatham. By what means he came there does not appear. Until they could ascertain that he had a settlement elsewhere, the parish officers of Chatham were bound to maintain him, and relief given under such circumstances is no evidence, or at least not conclusive evidence, of his being settled there. In process of time the pauper became settled at Trowbridge, and received relief from that parish. He afterwards revisited Chatham; but how did the officers of Chatham then act? They relieved him, undoubtedly, and supplied him with money, provisions, and clothes; but for what purpose? For the purpose of returning him to Trowbridge, and at the same time telling him not to come to Chatham again without an order or a pass. I think it is impossible to say, that relief given by Chatham under such circumstances and for such a purpose was relief given to the pauper in Trowbridge, or was any admission that he was settled and belonged to Chatham; if it had been, it would have been conclusive against the latter parish; but as it seems to me, it had no such effect. I cannot concur in the argument, that the mere fact of a pauper being first found in a particular parish, is presumptive evidence of his having been born there; and if the cases that have been referred to go that length, I, for one, must be allowed to doubt their authority. Upon the whole view of this case, I am of opinion that the sessions have come to a right conclusion." *Holroyd and Littledale, Js.* concurred. Order of sessions confirmed.

But relief given to a family resident in another parish, is evidence of a settlement in the relieving parish.

Rex v. Wakefield, 5 *East*, 335. Removal of Mary, the wife of G. F., &c., from Alverthorpe with Thornes to Wakefield, confirmed. Case:—Wakefield at various times during forty years past relieved the father of G. F., the husband of the pauper Mary, and different members of his family, some by being taken into the appellant's workhouse, and some in other ways, during the time that they resided in the township of Stanley, and had provided coffins for, and defrayed the expenses of, the funerals of some of the family. G. F., who at the time of the appeal was thirty-eight years old, the husband of the pauper Mary, and father of the other paupers, was born and had always lived in Alverthorpe with Thornes. Lord *Ellenborough, C. J.* "The relief was given by the township of Wakefield to the *father* of the pauper's husband and to different members of *his* family, which must mean the family of

the pauper's husband's father: and this, while they were residing in another township. This was evidence of the pauper's husband's settlement in Wakefield at that time; and this is stated to have been done at different times during the last forty years; the particular periods are not material, for no other settlement has been established since; and all things are presumed to continue in the same state, unless something be shown to the contrary. Then the only evidence against this is, that of the birth of the pauper's husband in Alverthorpe, which is no more than *prima facie* evidence of a settlement there. Then if there were evidence on both sides, the sessions were to decide on it." The other judges agreed, and *Le Blanc*, J. added, "That the place of birth is the weakest evidence of settlement." Orders confirmed.

Rex v. Stanley cum Wrenthorpe, 15 *East*, 350. Peter Musgrave, &c., removed from Leeds to Stanley cum Wrenthorpe. Order confirmed. Case:—Joshua Musgrave, the grandfather of the pauper, Elizabeth his wife, and Elizabeth his daughter, came into Stanley with Wrenthorpe with a certificate from Ossett dated the 5th of December, 1727. The pauper and his family had been relieved at different times by the overseers of Stanley with Wrenthorpe when residing at Leeds, and also whilst residing at Wakefield. Upon this evidence the court confirmed the order. The court (Lord *Ellenborough* absent) were clearly of opinion, that the sessions had drawn the right conclusion.

In *Rex v. Barnsley*, 1 *M. & Sel.* 377, Lord *Ellenborough*, C. J. said, "The only doubt is, whether, where the sessions have drawn a conclusion palpably erroneous upon two points we should send the case down again, or in case of the parties, draw the irresistible conclusion ourselves. The relief given by the parish of Killinghall to the family of J. G. for seven years, is evidence of such preponderating weight that I should think any judge would direct a jury to find upon such evidence, (supposing the question legally to come before them,) that G. was by some means or other a settled inhabitant of that parish. It does not, indeed, amount to an estoppel; but it is cogent evidence against the parish." (See also *Rex v. Woburn*, ante, 719.)

Rex v. Edwinstowe, 8 *B. & C.* 671. Order of removal of Sarah Dewick, &c., from Mansfield to Edwinstowe confirmed. Case:—The paupers, resident at Mansfield, applied for relief to B., the overseer of Edwinstowe, at a public-house in Mansfield, which is seven miles from Edwinstowe, on a market day; he gave her 3s. and said, if she wanted more she must apply again at Edwinstowe and he would give it her. A fortnight after, the pauper went to Edwinstowe for relief, when she saw B. and the other overseer: they then refused to give her relief, saying, she must throw herself upon Mansfield. *Bayley*, J. "I certainly agree that if there be not any premises to warrant the conclusion to which the justices at sessions have come, we are bound to reverse their decision. I do not say that, from the facts stated in the case, I should have drawn the same conclusion which the justices have done. But it was a question of fact; and it was for them to draw their conclusion from the evidence. Before we reverse their decision, we must see clearly that they were wrong. It is not sufficient that the evidence in support of their conclusion is slight. The question is, whether there was any evidence to warrant the justices in coming to the conclusion? It appears that at the time when the relief was given, the parish officer was at a distance from home. It is possible, however, that he may have known that the pauper was settled in Edwinstowe. If he did not know it, he might have said to the pauper, 'I cannot tell whether you are settled in the parish or not, and I give you this whether you are settled there or not.' But he gave the relief in an unqualified manner, and seems to have acted on the principle, that he conceived there was an obligation on his part to grant relief and a right in her to demand it. It was for the sessions to draw their conclusion from these facts. There was some evidence upon which they might exercise their discretion; and though I might, perhaps, have come to a different conclusion, I think we are not at liberty to reverse their decision." *Littledale*, J. "I concur in the judgment delivered by my brother *Bayley*, entirely on the ground that there were some premises to warrant the sessions in coming to

12. By Relief.

Evidence of a settlement in A., by showing that the pauper's grandfather came into B. under a certificate from A., is rebutted by showing that B. had relieved the pauper and his family while residing in other places.

Single instance of relief not conclusive.

12. By Relief.

Relief given to a pauper not residing in the relieving parish is *prima facie* evidence of his being settled there; but the sessions are not bound upon such evidence only to find that he is settled in the relieving parish; and, therefore, where upon the trial of an appeal the pauper proved relief given to him by the appellant parish while resident in another parish, the sessions having quashed the order of removal, this court refused to disturb the decision.

The sessions to draw the conclusion,

the conclusion to which they have come. The evidence was undoubtedly very slight; but it was for the sessions to draw their conclusion from it, and having done so, I think we ought not to disturb their decision." *Parke, J.* "Upon the evidence stated in this case, I should have come to a different conclusion. But it is for the sessions and not for us to draw the conclusion from the evidence given, and they having done so, I think their decision ought not to be disturbed." Order of sessions confirmed.

Rex v. Yarwell, 9 B. & C. 894; 4 M. & R. 685. T. Ireson, &c. were removed from Yarwell to Stibbington. Order quashed. Case:—The respondent proved by the pauper and his wife that the appellants had, about twenty-eight or twenty-nine years ago, and at three or four times subsequently, the last time being ten years ago, relieved the pauper and his family while they were residing in the respondent parish. When they wanted relief they applied to the parish officers of the appellant parish for work, and as they could not find it for them, they allowed the family 12s. a week. It was the pauper's wife who applied for relief upon all those occasions except one, when the application was made by the pauper himself. He had been once examined by the appellants, and stated that he had been an apprentice in their parish. The appellants also, within the last six years, and while the pauper was resident in the respondent parish, paid the expenses of his wife's confinement in a lunatic asylum at Peterborough. *Bayley, J.* "The sessions have sent this case for our consideration, without telling us what question they wish to be answered. They have stated a strong *prima facie* case, from which they were at liberty to draw the conclusion that the pauper was settled in Stibbington, but they were not bound to do so. It was purely a question for them. The pauper might have been examined as to the fact whether he had ever gained, or whether there was a reasonable ground to conclude that he had gained a settlement in the appellant parish by apprenticeship, or otherwise. If he was not examined as to that, the sessions may have refused to act on presumptive evidence of settlement, when the respondents might have proved a settlement actually gained by the pauper in the appellant parish." *Littledale, J.* "I am of the same opinion." *Parke, J.* "If the sessions intend to ask us whether there was *prima facie* evidence of a settlement in the appellant parish, I should have answered that there was, and that they ought to have acted upon it. If they asked me whether they were bound to do so, I should answer they were not." Order of sessions confirmed.

Rex v. Great Salkeld, 6 M. & Sel. 408. (See part of this case, *ante*, 278.) The case also stated, that soon after the order was quashed, the mother returned to Great Salkeld, and was removed from thence to Bongate, but whether by an order or not did not appear. Bongate received her, and told her she must nurse her child, the pauper then at the breast. When the pauper was six or seven years of age and residing with his aunt at Great Salkeld, the mother being in service, the overseer of Bongate went to Great Salkeld and paid the aunt some arrears of relief due from the parish for the maintenance of the pauper, and threatened to take him away that he might earn something for himself: the aunt was reluctant to part with him, and the overseers threatened to diminish her allowance. *Bayley, J.* "If the circumstances were sufficient to raise a presumption of a settlement in Bongate, it was for the sessions and not for this court to draw the conclusion, but I cannot see any ground for such a presumption."

13. Of Settlement
by Acknowledg-
ment, &c.

13. Of Settlement by Acknowledgment; viz. By Non-Appeal
against Order of Removal.

If the act of relieving a pauper can in any case be regarded as an acknowledgment by the parish giving the relief, that the pauper is settled with them, it seems reasonable that the acquiescence in or submission to an order of removal, by the parish against whom it is made, should be treated as at least equally conclusive. It is an adjudication by a competent legal authority (the magistrates) of the fact that the pauper is settled in the place to which

the removal is directed to be made, and although such an adjudication may be disputed upon appeal, yet if the party whose interest it is does not in due form put its correctness in issue the legitimate inference is, that it cannot be set aside or reversed. Mr. Justice *Buller* says, "There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against is *conclusive against all the world*." See *Rex v. Kenilworth* (*post*.) But it is only decisive of the question, *up to the time when it is made*; it has no effect *prospectively*; the pauper may acquire a settlement elsewhere immediately afterwards, and if he does, upon proof thereof, the order of removal unappealed against is no longer in force. The decisions upon which this plain and simple rule of law is founded, and the requisites of such an order to make it effectual for this purpose, will necessarily be given under the general title "Of Removals," and need not therefore be inserted here. (See the division VII. "Of the effect of an Order of Removal unappealed against," *post*.)

13. Of Settlement by Acknowledgment, &c.

CHAPTER VII.

OF REMOVALS.

THE authority of the magistrates to remove paupers to the place of their settlement is given by statute, and must be exercised according to the prescribed regulations, some of which relate to the *form* of the order itself. And though so strict an observance of them is not necessary, as the sessions, in case of appeal, are empowered by 5 Geo. II. c. 19, s. 1, to amend defects of this description, yet in matters of *substance*, correctness is essential, as errors of this kind cannot be aided or remedied in like manner. Besides, it will sometimes be doubtful whether the particular defect complained of be one of form only or of substance, the line of distinction not being very obvious in the statute, nor very accurately marked by any of the cases, so as to afford a sure guide upon all occasions. Hence the importance of correctness in both respects becomes apparent.

Although the enactments on this subject, or many parts of them, have already been given in different parts of this volume, it will be convenient to collect them together in this place, and then to show under what circumstances poor persons are removable; and lastly, the method of proceeding in cases of removal, with the requisites of the order for that purpose.

The general division will be as follows:—

- I. *Enactments on the Subject.*
- II. *Who may be removed.*
- III. *Of the Order of Removal, Suspension, and Execution thereof.*
- IV. *Of Persons returning after Removal.*
- V. *Order of Removal of one Certificated.*
- VI. *Appeal against an Order of Removal.*
- VII. *Effect of an Order Unappealed against.*
- VIII. *Effect of Quashing or Confirming an Order.*
- IX. *Of Amendments by Sessions.*
- X. *Power of Sessions in Orders of Removal.*

I. *Enactments on the Subject.*

13 & 14 Car. 2,
c. 12.

Recites inconveniences resulting from poor persons removing from one parish to another, &c.

I. *Enactments on the Subject.*

The first statute that authorized the removal of poor persons to their place of settlement, was the 13 & 14 Car. II. c. 12, s. 1, which, after reciting that the necessity, number, and continual increase of the poor, not only within the cities of London and Westminster, with the liberties of each of them, but also through the whole kingdom of England and dominion of Wales, is very great and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to

turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor: for remedy whereof, and for the preventing the perishing of any of the poor, whether young or old, for want of such supplies as are necessary, enacts "that whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another; and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers; be it therefore enacted, that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, *within forty days after* any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of 10*l.*, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are *likely to be chargeable* (a) to the parish shall come to inhabit, by their warrant, to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

The 13 & 14 Car. II. c. 12, s. 3, provides "That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or p'ace, to work in time of harvest, or at any time to work at any other work, *so that he or they carry with him or them a certificate* from the minister of the parish, and one of the churchwardens and one of the overseers for the poor for the said year that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children or some of them there (or otherwise as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case if the person or persons shall not return to the place aforesaid when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases abovesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

By the 1 Jac. II. c. 17, s. 3, the forty days' continuance in a parish intended by the above act, was to be reckoned from the delivery of notice in writing, by the person coming to settle, of the house of his abode, and the number of his family, to one of the churchwardens or overseers of the parish to which he shall so remove.

And by the 3 & 4 W. & M. c. 11, s. 3, it was further required that the churchwarden or overseer should cause such notice to be read on the next

1. *Enactments on the Subject.*

Enacts, that *within forty days* after any pauper coming to settle in a parish in any tenement under 10*l.* yearly value, justices may by warrant remove him, if likely to become chargeable, to his legal settlement, unless he give security.

How to be removed, coming to any tenement under 10*l.* yearly value.

(Altered and explained by 1 J. 2, c. 17, s. 3; 3 & 4 W. & M. c. 11, s. 3.)

Persons going to work in harvest.

1 Jac. 2, c. 17.

The forty days to be accounted from notice in writing.

3 & 4 W. & M. c. 11.

(a) Since 35 Geo. III. c. 101, (*post*, 823, 824), must have been "actually chargeable."

1. *Enactments on the Subject.*

35 Geo. 3, c. 101,
abolishing the
notice.

3 W. & M. c. 11,
s. 10.

Overseers re-
quired to receive
the persons re-
moved, under a
penalty.

Distress.

Commitment.

Appeal.

5 Geo. 2, c. 19.
Enables justices
to rectify de-
fects in form on
appeals,

and may proceed
to determine
them.

Lord's day, immediately after divine service, in the church or chapel of the parish, and that the forty days to make a settlement should be accounted from such publication.

These provisions as to notices were in effect abrogated by the 35 Geo. III. c. 101, s. 3, which enacts that no person coming into any parish, township, or place, shall from the passing of this act be enabled to gain a settlement therein by delivery and publication of notice in writing.

And the 3 W. & M. c. 11, s. 10, provides a more summary remedy as follows: "That if any person be removed by virtue of this act from one county, riding, city, town corporate, or liberty, to another, by warrant under the hands and seals of two justices of the peace, the churchwardens or overseers of the poor of the said parish or town to which the said person shall be so removed, are hereby required to receive the said person, and if he or they shall refuse so to do, he or they so refusing or neglecting (upon proof thereof by two credible witnesses upon oath before any justice of the peace of the county, riding, city, or town corporate, to which the said person shall be so removed) shall forfeit for each offence the sum of 5*l.* to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender or offender's goods, by warrant under the hand and seal of any justice of the peace of the county, riding, city, or town corporate, to which such person was removed, to the constable of the parish or town where such offender or offenders dwell; which warrant the said justice is hereby empowered and required to make; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said justices shall commit the said offender or offenders to the common gaol of the said county, riding, city, or town corporate or liberty, there to remain without bail or mainprize for the space of forty days: provided always and be it hereby enacted that all such persons who think themselves aggrieved with any such judgment of the said two justices, may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town corporate, or liberty, from which the said person was so removed." (a)

The 5 Geo. II. c. 19, s. 1, which gives the sessions power to amend defects of form in orders of removal, is as follows: "Whereas in many cases his majesty's justices of the peace by law are empowered to give or make judgments or orders, great expenses have been occasioned by reason that such judgments or orders have, on appeals to the justices of the peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in question between the parties concerned; therefore to prevent the same for the future, be it enacted, that after the 24th day of June, 1732, upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty, or precinct, within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforesaid, such justices so assembled at any general or quarter sessions shall and they are hereby required from time to time, within their respective jurisdictions upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders, to be rectified and amended without any cost or charge to the parties concerned, and after such amendments made, shall proceed to hear, examine, and consider the truth and merits of all matters concerning such original judgments or order, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon as by law they should or ought to have done in case there had not been such defect or want of form in the original proceeding; any law, usage, or custom to the contrary notwithstanding."

(a) See construction of 13 & 14 Car. c. 11, s. 10, in *Rex v. Davis, Sayer*, 163, 11. c. 12, and above section of 3 W. & M. (*post.*)

By 35 Geo. III. c. 101, s. 1 (called Mr. East's act), reciting the 13 & 14 Car. II. (*ante*, 820), and reciting also "that many industrious poor persons chargeable to the parish, township, or place where they live, merely from want of work there, would in any other place where sufficient employment is to be had, maintain themselves and families without being burthensome to any parish, township, or place; and such poor persons are for the most part compelled to live in their own parishes, townships, or places, and are not permitted to inhabit elsewhere, under pretence that they are likely to become chargeable to the parish, township, or place into which they go for the purpose of getting employment, although the labour of such poor persons might in many instances be very beneficial to such parish, township, or place: and whereas the remedy intended to be applied thereto by the granting of certificates, in pursuance of the 8 & 9 Will. III. intituled 'An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom,' hath been found very ineffectual," it enacts, "That from and after the passing of this act, so much of the said in part recited act of 13 & 14 Car. II. as enables the justices to remove any person or persons that are likely to be chargeable to the parish, township, or place into which they shall come to inhabit, shall be and the same is hereby repealed; and that from henceforth *no poor person shall be removed* by virtue of any order of removal from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, *until such person shall have become actually chargeable to the parish, township, or place in which such person shall then inhabit*, in which case two justices of the peace are hereby empowered to remove the person or persons in the same manner and subject to the same appeal, and with the same powers, as might have been done before the passing of this act with respect to persons likely to become chargeable."

Sect. 2. "And whereas poor persons are often removed or passed to the place of their settlement during the time of their sickness, to the great danger of their lives; be it enacted, that in case any poor person shall from henceforth be brought before any justice or justices of the peace, for the purpose of being removed from the place where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it shall appear to the said justice or justices that such poor person is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justice or justices making such order of removal, or granting such vagrant pass, are hereby required and authorized to suspend the execution of the same until they are satisfied that it may safely be executed, without danger to any person who is the subject thereof; which suspension of, and subsequent permission to execute the same, shall be respectively indorsed on the said order of removal or vagrant pass, and signed by such justice or justices; and no act done by any such poor person continuing to reside in any parish, township, or place, under the suspension of any such order, shall be effectual, either in the whole or in part, for the purpose of giving him or her a settlement in the same: and the charges proved upon oath to have been incurred by such suspension of any order of removal may by the said justices be directed to be paid by the churchwardens and overseers of the parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order; and if the churchwardens or overseers of the parish, township, or place, to which the order of removal shall be made, or any or either of them, shall upon the removal or death of such poor person, ordered to be removed, refuse or neglect to pay the said charges within three days after demand thereof, and shall not within the same time give notice of appeal as is hereinafter mentioned, it shall and may be lawful for one justice of the peace by warrant under his hand and seal, to cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting payment of the same, and also such costs attending the same, not exceeding forty shillings, as such justice shall direct; and if the parish, township, or place, to which the removal of such poor person is made, or was ordered to

1. *Enactments on the Subject.*

35 Geo. 3, c. 101.

So much of recited act as enables justices to remove persons *likely to be chargeable* to parishes, repealed; and no persons to be removed till they have become actually chargeable.

Justices may suspend the removal of sick persons.

Charges incurred by such suspension to be paid by the officers of the parish to which they are ordered to be removed, which may be levied with costs.

1. *Enactments on the Subject.*

35 Geo. 3, c. 101.

If costs exceed twenty pounds, appeal may be made to the quarter sessions.

This act not to alter the power of justices to pass or punish vagrants, by 17 Geo. 2, c. 5, except as to suspension.

Rogues, &c., to be considered as chargeable, and may be removed.

Unmarried women with child to be deemed chargeable. Bastards to be deemed of the mother's parish. Former acts touching bastards, &c. to remain in force. (a)

be made, before the death of such person as aforesaid, be without the jurisdiction of the justice of the peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township, or place as aforesaid, who upon receipt thereof is hereby authorized and required to indorse the same for execution: provided, nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of twenty pounds, the party or parties aggrieved by such order may appeal to the next general quarter sessions against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid; and in every such case the said court of quarter sessions shall direct that the said order, so amended, shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the said court shall direct; provided that nothing in this act contained shall extend to alter or abridge the power of justices of the peace to pass or punish vagrants in the manner and under the circumstances set forth in an act, passed in the seventeenth year of the reign of his late majesty king George the Second, intituled, *An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to Houses of Correction* (except so far as regards the power of suspending the vagrant pass, in the manner and for the causes before mentioned)."

Sect. 5. "That every person who shall have been convicted of larceny, or any other felony, or who by the laws now in being shall be deemed a rogue, vagabond, idle or disorderly person, or who shall appear to any two or more justices of the peace of the division wherein such person shall reside, upon the oath of one or more credible witness or witnesses, to be a person of evil fame, or a reputed thief, such person not being able to give a satisfactory account of himself or herself, or of his or her way of living, shall be considered as a person actually chargeable within the true intent and meaning of this act, to the parish in which such person shall reside, and shall be liable to be removed to the parish of his or her last legal settlement by the order of the said justices of the peace, whereof one to be of the quorum, of the division where any such person shall reside."

Sect. 6. "That every unmarried woman with child shall be deemed and taken to be a person actually chargeable, within the true intent and meaning of this act, to the parish, township, or place, in which she shall inhabit, and may be removed as such to the place of her last legal settlement; and in case any order of removal obtained for such purpose shall be suspended for any of the reasons before mentioned, and during such suspension the said woman shall be delivered of any child, which by the laws of this kingdom shall be a bastard, every such bastard child shall be deemed and taken to be settled in the same parish, township or place, in which was the legal settlement of the mother at the time of her delivery: provided nevertheless, that all act or acts heretofore made touching bastard children, or concerning the mothers or reputed fathers of such children, shall be and remain in full force and effect after the passing of this act, as well in cases where by this act the place of settlement of such bastard children is directed to be the same as that of the mothers of such children, as in cases where the place of settlement of such bastard children remains the same as it did before the passing of this act."

(a) This constructive *chargeability* is not affected by the 69 sect. of 4 & 5 Will. IV. c. 76. (See Appendix.) That section applies only to the *punishment of the mother* and the *security of the putative father*. And as a bastard child after the age of sixteen will be settled in the

place of his birth, the object of the enactment by Mr. East's statute still continues. *Sed quare*; see observations in *Burn's Justice*, tit. *Poor*, 1126, 1127, 1140, 1141, edited by Mr. Serjt. D'Oyley and E. V. Williams. See further, *post*.

49 Geo. III. c. 124, s. 1. After reciting the 35 Geo. III. c. 101, and further reciting that "it is expedient that the power of putting an end to the suspensions of any such order of removal or pass, and of executing the several other authorities aforesaid, should not be confined to the order of the justice or justices making such order or pass; be it enacted, that in all cases wherever the execution of any order of removal or of any vagrant pass shall be hereafter suspended by virtue of the said recited act, it shall be lawful for any other justice or justices of the peace of the county or other jurisdiction within which such removal or pass shall be made, to direct and order that the same shall be executed, and to direct the charges to be incurred as aforesaid to be paid, and to carry into execution any such amended orders as aforesaid, as fully and effectually to all intents and purposes as the said respective powers and authorities can or may be executed by the said justices who shall make any such order of removal, or by the justice who shall grant any such pass as aforesaid."

Sect. 2. "That when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same."

Sect. 3. "' And in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with or related to each other, and who are living together as one family at the time of any order of removal made or vagrant pass granted, during the dangerous sickness or other infirmity of any one or more of such family, on whose account the execution of such order of removal or vagrant pass is suspended: ' be it enacted, that where any order of removal or vagrant pass shall be suspended by virtue of this or of the said recited act, on account of the dangerous sickness or other infirmity of any person or persons thereby directed to be removed or passed, the execution of such order of removal or vagrant pass shall also be suspended for the same period with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person or persons at the time of such order of removal made or vagrant pass granted."

Sect. 4. "That whenever it shall happen that any pauper is by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates."

The 5 Geo. IV. c. 83, s. 3, enacts, "That every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect, he or she, or any of his or her family, whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place; every person returning to and becoming chargeable in any parish, township, or place, from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place; every petty chapman or pedlar wandering abroad and trading, without being duly licensed, or otherwise authorized by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any child or children so to do, shall be deemed an idle and disorderly person, within the true

1. *Enactments on the Subject.*

49 Geo. 3, c. 124. Where any order of removal, &c., shall be suspended, any justice for the place may order the same to be executed, &c.

How time of appealing shall be computed.

Order of removal suspended in case of sickness, may be extended to other persons of the family.

One magistrate may examine an infirm pauper as to his settlement, and report to petty sessions.

5 Geo. 4, c. 83. Persons refusing to maintain their family, or returning after removal, deemed "idle and disorderly."

1. *Enactments on the Subject.*

5 Geo. 4, c. 83.

Persons convicted chargeable to parish in which they reside.

4 & 5 Will. 4, c. 76. No person to be removed till after notice of his being chargeable has been sent to the parish to which order of removal is directed.

Such person may be removed if order submitted to;

but not in case of appeal, until it be determined.

intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month "

By section 20 it is enacted, " That every person who, under the provisions of that act, shall have been convicted as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be *actually chargeable* to the parish, township, or place, in which such person shall reside; and such person shall be liable to be removed to the parish of his or her last legal settlement, by the order of two justices of the peace of the division or place in which such person shall reside."

The 4 & 5 Will. IV. c. 76, s. 79, enacts " That from and after the 1st day of November, 1834, no poor person shall be removed or removable, under any order of removal from any parish or workhouse, by reason of his being chargeable to or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired; or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal."

Sect. 84. " Provided always, that no charges or expenses of relief or maintenance shall be recoverable under a suspended order of removal, unless notice of such order of removal, with a copy of the same, and of the examination upon which such order was made, shall have been given within ten days of such order being made to the overseers of the poor of the parish to whom such order is directed."

6 & 7 Will. 4, c. 65.

By 6 & 7 Will. IV. c. 65, s. 3, carriages conveying prisoners or paupers are exempted from duties of assessed taxes.

2. *Who may be Removed.*II. *Who may be Removed.*

This head may be subdivided as follows:—

1. *Of Removal of Paupers from or to their own Estate.*
2. *Of Removal of the Wife.*
3. *Of Removal of Children.*
4. *Of Removal of Servants.*
5. *Of Removals under 35 Geo. III. c. 101, s. 6, of Women with Child.*
6. *Of Removal of Casual Poor.*
7. *Of the Removal of Poor Persons born in Scotland, Ireland, Isles of Man, Scilly, &c.*
8. *Of the Removal of Poor Persons born in Guernsey or Jersey.*
9. *Of Removal of Soldiers, &c.*

1. *Of Removal of Paupers from or to their own Estate.*

A person resident

1. OF REMOVAL OF PAUPERS FROM OR TO THEIR OWN ESTATE.

Rex v. Martley, 5 East, 40. Removal from Doddenham to Martley confirmed. Case:—On the 25th of November, 1754, the dean and chapter

of Worcester granted to H. B., the grandfather of the pauper, a lease for lives of a cottage and garden, at the yearly rent of 2s. 6d. At his death, leaving no will, he was succeeded in possession by his son William, (the pauper's father,) who afterwards died, leaving a will, devising the premises to his wife for life, remainder to W. B., the pauper. The pauper came at the end of two years to reside with his mother on the premises, till he married, (February 2d, 1790,) when she demised to him the premises at a yearly rent, and went to reside elsewhere, leaving the pauper in the sole occupation. On the 27th of August, 1795, the second life died. On the 13th of July, 1798, the mother of the pauper, who was tenant for life under the will of the pauper's father, died. The pauper continued in possession till November 26th, when, on payment of a fine of two guineas, a new lease was granted to the pauper at a new rent of 1s., for three new lives, still existing. At this time the lives in the first lease were all extinct. The pauper's residence on the premises continued till the time of the removal. Lord *Ellenborough*, C. J. said, "That there would be difficulty in deciding that this was a purchase under 30l. within the statute;" but he asked, "How, admitting that, and presuming the third life under the first lease to be extinct, (she not having been heard of for thirty years,) this order, removing the pauper from his own estate, could be supported?" To this it was answered, "That where a man applies for relief, he must be taken to consent to all things necessary to afford him that relief in the due course of law; and, consequently, to an order of removal to his last legal settlement." But the court held, "That such a person was altogether irremovable whilst he resided on his own estate."

Rex v. Amphill, 2 B. & C. 847; 4 D. & R. 447; 2 D. & R. Mag. Ca. 297. The facts of this case are stated *ante*, 648. *Bayley*, J. on the question of the power to remove, said, "I am of opinion, that at the time when this order was made the pauper was removable. It is said, that although he had in fact received relief from that parish, yet as he possessed property, he was not actually chargeable. But, I think, that as the parish did not act fraudulently, and as they were compelled to grant him relief by an order of justices, the pauper is to be deemed as actually chargeable, and if so, then he was removable under 35 Geo. III. c. 101, although he had resided on the tenement more than forty days. It is material to consider the history of the law with respect to this power of removal. By the 13 & 14 Car. II. c. 12, s. 1, upon complaint made to any justice of the peace within forty days after any person comes to settle in any tenement under the yearly value of 10l., any two justices of the division where any person that is likely to be chargeable to the parish shall come to inhabit are authorized to remove such person to such parish where he was last legally settled. Under that statute complaint must be made to a justice within forty days after the party has come to reside in the parish. The 35 Geo. III. c. 101, recites this act, and repeals so much of it as enables justices to remove persons likely to be chargeable, and enacts, that 'no person shall be removed from the parish where he shall be inhabiting to the place of his last legal settlement until such person shall have become actually chargeable to the parish in which he shall then inhabit;' and then two justices are empowered to remove such person in the same manner, and subject to the same appeal, and with the same powers as might have been done before the passing of that act with respect to persons likely to become chargeable. Now, taking these two statutes together, I think the meaning of them is, that the statute 35 Geo. III. c. 101, takes away altogether the power of removing, within forty days, persons likely to become chargeable, but gives the power to remove persons actually chargeable at any time after they have become so, and before they have actually gained a settlement." *Holroyd* and *Littledale*, Js. both concurred on this point.

A pauper may be removed before his tenancy commences. (*Rex v. St. Michael, Coventry*, *ante*, 805.)

Wookey v. Hinton Blewet, 1 Stra. 476. A person settled at Hinton Blewet had an estate descended to him in Wookey; whereupon the justices send him thither as to the place of his last settlement. But by the court: "The order must be quashed; for it is no settlement nor inhabitation,

1. Removal of Paupers.

on an estate granted him for lives, in consideration of two pounds two shillings fine and one shilling rent, cannot be removed therefrom, though he have applied for relief, and is thereby actually chargeable. Whether this is an estate within 9 Geo. 1, *quære*?

A person become chargeable is therefore removable by 35 Geo. 3, c. 101, although he has resided above forty days on a tenement, if he has not paid a year's rent, as required by the 59 Geo. 3, c. 50.

If estate descend to a man in another parish, he is not therefore removable thither

1. *Removal of Paupers.*

as to his settlement.

2. *Of Removal of the Wife.*

A woman cannot be removed from her husband's estate, though he had run away.

Nor from a leasehold tenement of the husband's, above the annual value of ten pounds.

The wife of a transported convict went to B., and resided there upon an estate in which she was jointly interested with her sisters, under their mother's marriage settlement: Held, that she was residing upon her own, and irremovable.

though if he should go thither he could not be removed; it may be a great injury to send him away from a good trade at Hinton Blewet to perhaps half an acre of land wherein he has but a term."

2. OF REMOVAL OF THE WIFE.

Rex v. Aythorp Rooding, Burr. S. C. 412; 2 Bott, 104. William Gates, husband of the pauper, Susannah Gates, being settled at White Rooding, went away and left his wife and children. Whereupon she and her children went and lived for forty days, without her husband, in a copyhold tenement of her husband's at Aythorp Rooding. She was removed to White Rooding. Order quashed. By the court: "There doth not appear any dissent of her husband from her going there, and therefore it is rather to be presumed that she went with his consent. The husband's settlement remains as it was, but nevertheless the wife was not removable from his estate. It is one thing to say, that a person may not be removed; and another, that such person doth not gain a settlement. The husband himself would not have been removable from his own if he had gone thither. A man's right to reside upon his own estate is founded on *Magna Charta*, which says, that a man shall not be disseised of his freehold. A wife hath a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, it would have made an alteration." And the court were unanimous that the justices could not remove her from her husband's property.

Rex v. Leeds, Burr. S. C. 524; 1 Bla. Rep. 466. Joseph Howe, husband of Anne Howe, the pauper, took a tenement of 10*l.* a year at Blackfordby, and resided there above forty days. Afterwards he took a tenement at Leeds of above 10*l.* a year, and went and resided there for above forty days, leaving his wife at Blackfordby. Then he returned to Blackfordby, and stayed with his wife there twenty-seven days. And on his leaving her and going away to Leeds, she was removed from Blackfordby to Leeds, as to her place of settlement. Order confirmed. It was agreed, that her settlement must follow that of her husband; but the court were of opinion that the justices had no power to remove her from Blackfordby whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at Blackfordby, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows, that they could not remove his wife so long as it remained his. Both orders quashed.

Rex v. Brington, 7 B. & C. 546; 1 M. & R. 431; 1 M. & R. Mag. Ca. 122. Order of removal of Maria Chambers, wife of Edward Chambers, a convict at Van Diemen's Land, and their daughter, Mary Elliott, from Brington to Badby, quashed. Case:—John Elliot, by a marriage settlement in January, 1772, settled a messuage in Little Brington, and about twenty acres of land, in trust to himself for life, and remainder to his wife; and after other remainders, remainder to the first son and his heirs, remainder to the second and every other son, remainder to the use of the daughters of the said John on the body of Mary, and the heirs of their bodies, as tenants in common. They had four sons and eight daughters, all of whom died without issue in the lifetime of their mother, except four daughters, viz. Elizabeth, Alice, Maria, and Sophia, who survived her. Maria, the pauper, married Edward Chambers, whose legal settlement is now in Badby, where she was living until February, 1826, (her husband being at that time, and continuing at the date of the order of removal, absent from England,) when she went to Brington, the parish in which the property lies, to her sister, who lives in the house mentioned in the settlement, and resided there thirteen weeks, until she was removed to Badby. *Bayley, J.* "The question is not as to the place where the wife is settled; that, without doubt, is in her husband's parish, Badby. This is a case where the party goes to her own estate, of which she has a seisin: the husband had not sole seisin, for when an estate in fee comes to a *feme covert*, the interest of the husband and wife is a seisin

in fee, and both in right of the wife. (*Polyblank v. Hawkins*, Doug. 329.) *Rex v. Aythorp Rooding* (*ante*, 828,) is not so strong a case as the present: there the property was the husband's, while here it is the property of the wife, descendable to her heirs. There is no distinction between a sole occupation and an occupation in coparcenary. Although no partition had been made, the wife had a right to say that she would occupy her part, and not suffer other persons to occupy it. And there might be good reason for it here; as, by the husband's absence abroad, it might have been difficult to collect the profits without residence. The pauper, therefore, is irremovable, although she could not have gained any settlement by her residence in Brington."

Rex v. Matlock, 1 Adol. & Ell. 124. Appeal against an order of justices removing G. Arnalt and his wife from Wirksworth to Matlock. Order confirmed. Case:—It was admitted on both sides that the pauper, George Arnalt, was legally settled in Matlock, and was removable thither, unless the power to remove him from Wirksworth was negatived by the following facts. The pauper, George Arnalt, being a married man, went to live with his father in a cottage built on the waste in Wirksworth; his father paid sevenpence a year rent to the Duchy of Lancaster for the cottage, and the pauper continued to pay the rent after his father's death until about nineteen or twenty years ago, when all the cottages belonging to the Duchy of Lancaster were sold, and the pauper purchased his cottage for 5*l.* 2*s.* 2*d.*, and it was conveyed to him. In 1827 the pauper sold the cottage to a person named Wilson for 40*l.*, and Wilson at the same time demised it to the pauper and his wife for their joint lives and the life of the survivor of them at a rent of 40*s.* a year. At Christmas, 1831, Wilson demanded a year's rent of the pauper, which he was unable to pay, and Wilson then took possession of the cottage. The pauper denied that there was any power of re-entry in the case of non-payment of rent. A lodger as well as the pauper's furniture remained in the house after he quitted it. About the same time that this transaction happened, the pauper applied to the overseer of Wirksworth for relief, but the overseer refused to relieve him until the lease was destroyed, and Wilson also called upon the pauper and told him that if he and his wife would consent to give up the lease, they should have 5*s.* a week instead of 2*s.* 6*d.*, and should not be disturbed during their lives. The pauper finally agreed that the lease should be destroyed, and Wilson brought it to an inn in Wirksworth, where it was destroyed in the presence of many persons, the pauper himself assisting to destroy it. It did not appear on the trial of the appeal that the pauper's wife was present when the lease was destroyed, or that she afterwards gave her consent to its being so disposed of. Wilson told the pauper that he should not be disturbed, but on his applying for relief, he was informed that unless he went into the workhouse he could not be relieved. He and his wife accordingly went into the workhouse and remained there for a fortnight or three weeks, when they were removed to the appellant parish pursuant to the order of removal. *Per Curiam*: "The order must be quashed." Order of sessions quashed.

St. Michael's, Bath, v. Nunny, 1 Stra. 544. Order of removal of the wife of a poor person. It was moved to quash the order, because it did not appear the husband was at the time of the removal in St. Michael's, so that it might be they sent the wife away from the husband. But by the court: "We cannot intend he was not; if he were in the parish from which she was sent, that indeed would vitiate the order; for the wife cannot be removed from her husband: but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed."

Rex v. Stockton, 2 Nev. & M. 353; 5 B. & Ad. 546. Appeal against an order of removal of F. Carstofen and her three children from Stockton to Spalding. Order reversed. Case:—On the 2d of May, 1832, Robert Carstofen, who is a native of Scotland, without settlement in England, and a lunatic, returned

A house in the parish of W. was let to A. and B. his wife, for their joint lives and the life of the survivor. A. and B. were ejected wrongfully from the house, but their furniture and a person who had lodged with them remained in the house. Afterwards A. assisted the lessor to destroy the lease: Held, that after these transactions A. and B. continued irremovable from W. though they had become actually chargeable.

The wife cannot be removed without the husband, if he is in the parish. (a)

Removal of a married woman and children to the place of her maiden settlement, her husband being

(a) And see *ante*, 828.

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a lunatic and having no settlement: Held, that the order was not void on the ground that it would effect the separation of husband and wife, because it was not to be presumed that when it was made, the husband was residing in parish A. or was not residing in parish B.

from Sunderland in Durham, where he had for some time been residing, to Stockton, accompanied by his wife and her three children. Almost immediately on their arrival in that township they applied to the assistant overseer for relief, and on the 2d and 3d of that month were relieved by him and ordered to quit the town and return to Sunderland. About the 19th of May the wife again applied to the Stockton overseers for relief, whereupon she and her three children were removed to the parish of Spalding by an order of justices, which stated, that upon complaint "that Frances Carstofen, the wife of Robert Carstofen, a Scotchman, having no settlement in England, and who is a lunatic, and her three children (therein described) had come to inhabit in Stockton, not having gained a settlement there, nor producing any certificate owning them to be settled elsewhere, and that they had become chargeable to the said township of Stockton;" they the said justices upon due proof did adjudge the same to be true, and likewise adjudged "that the lawful settlement of her the said Frances Carstofen and her three children is in the parish of Spalding;" they therefore required the churchwardens and overseers of Stockton to convey her and her three children from Stockton to Spalding. The parish of Spalding appealed against this order, and to bring the question before the court the following admissions were made. That the maiden settlement of F. C. is in the parish of Spalding, and that she was legally married to Robert Carstofen, and that the three children named in the said order are legitimate, that the said R. C. was born in Scotland, that he has not gained any settlement in England, and that he was a lunatic and living at the date of the order of removal. On the hearing, an objection was taken to the form of the order, and the court of quarter sessions quashed the same on the ground that it was bad on the face of it, as it did not contain any statement of the desertion of the wife by the husband, that the defect was in a matter of substance, which the court had not power to remedy, and that evidence could not be received for the purpose of amending the order. The township of Stockton tendered evidence for this purpose, and offered to show that the husband was not living with his wife nor in the township of Stockton at the time of the wife's application for relief, and the order of removal being made, but that he had escaped from his family in a fit of lunacy on the preceding 4th of May, when they were all in the parish of Thirsk, in Yorkshire. If this court should be of opinion that the order was bad on the face of it, and not amendable, the order of sessions was to be confirmed, otherwise to be quashed. *Denman, C. J.* "The authorities cited, show that the court will not presume any fact in order to vitiate an order of removal. Here it is perfectly consistent with that order, that it may not have the effect of separating husband and wife, for the husband and wife may not have been living together at the time when that order was made, or he may be living at Spalding, the parish to which she is ordered to be removed." *Parke, J.* "This case falls within *St. Michael, Bath, v. Nunny* (1 Str. 544, Burr. S. C. 815, ante, 829). We cannot intend that when the order was made, the husband of the pauper was residing at Stockton, or that he was not at Spalding." *Taunton and Patteson, Js.* concurred. Order of sessions quashed.

To make such removal invalid, it must appear that the husband was resident with the wife at the time of her removal.

Rex v. Ironacton, Burr. S. C. 153; 2 Bott, 111. Mary, the wife of William King, removed to Ironacton, the settlement of her husband. Order confirmed. It was objected that the wife was removed without the husband. But the court over-ruled the objection; for how doth it appear that the husband was not at Ironacton at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of.

If a wife be removed (*eo nomine*) to the place of her legal settlement, it is good.

Rex v. Higher Walton, Burr. S. C. 162; 2 Bott, 112. Order of removal of Mary Bennet, wife of Samuel Bennet, to Higher Walton, the place of her settlement, confirmed. It was urged that it did not appear whether it were this woman's settlement in her own right, or in the right of her husband, and nothing shall be intended. Now if it were not her settlement in right of her husband, the justices had no power to send her thither. By the court: "It is adjudged to be her last legal settlement; and she could not be settled but where her husband was; and we are not to intend

any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at Higher Walton." Motion denied.

Rex v. Yspytty, 4 M. & Sel. 52. Order of removal of Ann Williams from Llandyrnog to Yspytty confirmed. Case:—The pauper is the wife of Griffith Williams, a soldier in his Majesty's service at Woolwich. The mother of the husband proved that he gained a settlement about eleven years ago in Yspytty. This was the only evidence of the settlement of the husband or of the pauper, and no attested copy was produced of the husband's examination upon oath, pursuant to 54 Geo. III. c. 25, s. 69. The order was for the removal of Ann Williams (*not stating her to be the wife of any one*), Jane her daughter, aged three years, and Griffith her son, aged two years; adjudging that their settlement (not that the settlement of her husband) was in Yspytty. *Rex v. Bucklebury* (1 T. R. 164, *post*, 835,) was cited to show that the order was well enough in point of form, although it did not state that Yspytty was the settlement of the husband. *Contra*. "The evidence of the mother to prove the settlement of the son, when it appeared the son himself might have been called to prove it, was not the best evidence." Lord *Ellenborough*, C. J. "If the respondent parish prove enough to launch a *prima facie* case of settlement, is it necessary they should prove more? Must they go on to call witnesses at the hazard of having that which is already proved defeated? As to the objection upon the form of the order, it is stated that it is the wife's settlement, and the medium through which she became settled there need not be stated." Order confirmed.

Rex v. Carleton, Burr S. C. 813. Johanna, wife of Simon Mac Owen, and their four children, removed from Hoylandswain to Carleton, stating in their order that complaint was made, that Simon Mac Owen, Johanna his wife, and children, came to inhabit in Hoylandswain, not having gained a settlement there; and that Simon was an Irishman, and had done no act in England to gain a legal settlement, and that his wife and children were chargeable to Hoylandswain; which they adjudged to be true, and that the settlement of Johanna and children was in Carleton; and therefore they removed them thither. Order confirmed. Case:—John Tyas, father of Johanna, in 1727, came with a certificate from Carleton to reside in Hoylandswain, and during his residence there, Johanna was born, and continued to live with him there until she was upwards of twenty-one years of age: she afterwards took a house at Hoylandswain, and resided therein till she was married to Simon, who upon his marriage went to reside with Johanna in her house, and continued to reside with her from the time of their marriage in 1766, until she and her children were removed under this order from the said Simon, and from his dwelling-house wherein he then and still continues to reside; Simon maintained himself and family until a little time before the removal was made. It was objected that this would occasion a separation between husband and wife; and amount in effect to a divorce. And the court were clear that the removal was wrong. It was not like the case of the husband being dead, or having left his wife. Here the husband was alive; resided at Hoylandswain; followed the business of a cloth-dresser there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish had had the benefit of his labour nine years. This man was settled in a house and carried on business in this place. There might be no business for a cloth-dresser at Carleton at all. Or this man might have no acquaintance there. He might starve there though he could maintain his family at Hoylandswain. Orders quashed.

Rex v. Hinxworth, Doug. 46 (n. 13.); *Cald.* 42; 2 *Bott*, 115. Sarah, called in the order "the wife" of Joseph Griffin, was removed from Cheshunt to Hinxworth in the husband's absence, and without having examined him. The order was not appealed against. The husband soon after went

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An order for the removal of a married woman (not stating her to be such) and her children to Y., adjudging that the lawful settlement of her and her children is in Y., was held well, without adjudging that Y. was her husband's settlement; and proof by the mother of the husband that he gained a settlement in Y., by hiring and service, was held sufficient, without calling the husband.

The wife and children of an Irishman could not, when they became chargeable, be removed from him to the wife's parish. (a)

Removal of a woman, as the wife of J. G., to C., is good, for it will be presumed that C. is the husband's settlement.

(a) See *Rex v. Leeds* (*ante*, 97), and *Rex v. Cottingham* (*ante*, 99); as to the removal of the wife of an Irishman or Scotchman, *post*.

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to his wife and children at Hinxworth, from whence they were all sent back under a new order to Cheshunt. Cheshunt appealed against this order, and producing the former order, insisted it was conclusive as to the husband as well as the wife and children. The sessions, however, after hearing evidence as to Griffin's settlement, confirmed the new order as to him, and quashed it as to the wife and children. The wife then went back with her children to her husband at Cheshunt. After which a third order was made, removing the children again to Cheshunt. This was likewise appealed against, and confirmed as to all but two of the children, who were under seven years of age, as to whom it was quashed. By Lord Mansfield, C. J. "There is nothing in this case. It is admitted that if they had put into the first order, that it was the husband's settlement, that would have been conclusive; and the omission makes no difference. The general rule is, that the husband's settlement is the settlement of the wife. There are some special exemptions; as where the husband is beyond sea. But the presumption is in favour of the general rule; and if this had been the case of an exception, it ought to have been stated." And the rule was made absolute to quash all the orders but the first.

If the husband return after the wife has been removed, and that order of removal is quashed, they cannot be removed together to the place of the former removal.

The wife may be removed without her husband (he having no settlement) if they consent.

Rex v. Leigh, Doug. 46; *Cald.* 59; 2 *Bott*, 116. Order of removal of a married woman from Ewell to Leigh, in the absence of the husband, quashed. The husband afterwards returning to Ewell with his wife, they were removed under a new order to Leigh, which was confirmed; but it was given up as not to be supported, since *Rex v. Hinxworth* (*ante*, 831.)

Rex v. Eltham, 5 *East*, 113. An order made on examination of the husband, and with the consent of him and his wife, removed Mary, wife of Peter Finn, a Scotchman, who never gained a settlement in England, and children, from St. George the Martyr, to Eltham. There was an appeal, which was dismissed without a case; and both these orders being removed by *certiorari*, it was objected that the wife was removed by such order from her husband, who was still living, and probably in the very parish whence she and her children were removed, and whose assent to their separation, even if it could be presumed in favour of the order, was invalid. In *St. Michael's v. Nunney* (*ante*, 829), the court said, that if the husband were in the parish whence the wife was sent, it would vitiate the order: now that fact is to be collected in this case; for he is stated to have been examined before the magistrates, and to have given his consent to the removal. But by *Lawrence*, J. "How does it appear that the husband was living in St. George the Martyr? He might have been before the magistrates without residing there. The order only states, that the wife and children were come to inhabit in that parish." Lord *Ellenborough*, C. J. "Independent of the mentioned objection, what doubt is there in the case? A Scotchman, who has no settlement of his own, and is desirous to give his wife and children the benefit of hers, being unable to maintain them, consents that she should be sent to her parish, to which she herself is willing to go. Why should he not consent? This is nothing like the contract of separation declared to be illegal in *Marshall v. Rutton* (8 *T. R.* 545). Servants, and other persons of that description, members of the same family, who are to subsist by their labour, must frequently separate for that purpose. Here there is neither a private nor a public injury." The court affirmed the orders. (a)

And the wife of an Irishman, who has no settlement in England, may, if deserted by him, be removed to her maiden settlement. (See *Rex v. Cottingham*, 7 *B. & C.* 615, *ante*, 99.)

A married woman pregnant of a child, which will be a bastard, is removable, if the husband be abroad, as an unmarried woman with child.

Rex v. Tibbenham, 9 *East*, 388. Upon complaint of the parish officers of Diss, in Norfolk, that Rebecca Knowles, wife of John Knowles, lately came to inhabit in Diss, not having gained a legal settlement there; "and that the said R. K. is actually become chargeable to the said parish of Diss," two justices, "upon due proof, &c. &c. adjudged the same to be true," and adjudged the lawful settlement of the said R. to be in Tibbenham, &c.

(a) This case, as far as it regards Scotchmen, is no longer an authority. (See *Rex v. Leeds*, *ante*, 97.)

&c. This order was confirmed by the sessions, subject to the opinion of the court upon the following case: the pauper's husband, John Knowles, being settled at T., had gone to the East Indies four years before, and had never returned. At the time of the removal the pauper was residing in Diss, and pregnant of a child, which was afterwards born a bastard in T. The pauper never received any relief from Diss parish, nor was chargeable in any other manner than as above mentioned. Lord *Ellenborough*, C. J. "The first question is, whether a *married* woman, who, in the absence of her husband abroad, is pregnant under such circumstances as that the child, when born, would be deemed by law a bastard, be liable to be removed under the 35 Geo. III.? The act indeed says, "that every *unmarried* woman with child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of the act," and removable: but the legislature plainly had in view that every woman pregnant of a child, which was not protected by the matrimony of its parents, but would, when born, be a bastard, should be removable, whether married or unmarried; for though the mother were married, yet if her child would by law be a bastard, she was in *pari jure* within the scope of this act with an unmarried woman who was pregnant. The next question is, whether the order of removal be good in the form of it? It states the complaint of the parish officers of Diss, that Rebecca, the wife of John Knowles, *is actually become chargeable* to their parish, &c.; and the justices, upon due proof made thereof, adjudge the same to be true. The act says, that a woman under the circumstances I have stated, 'shall be deemed and taken to be a person actually chargeable,' &c. Have not then the justices done enough in stating that the pauper was 'actually become chargeable to the parish?' They are to draw the conclusion whether chargeable or not, and it is enough for them to state that conclusion upon the face of the order, without stating the premises upon which it was founded. If that conclusion be disputed the party is to appeal; and such appeal having been made, and the facts stated to us, it is to be seen, thirdly, whether the premises warranted the magistrates in drawing that conclusion. The legislature intended that an unmarried woman, or, what is the same for this purpose, a married woman, under the circumstances I have mentioned, being with child, is *prima facie* chargeable within the law: it raises a presumption of her being chargeable. But I say again, as I said in *Rex v. Alveley* (post, 837), that if it appears that the woman is a person of substance, and that there is no pretence to say that she is likely to bring a burden upon the parish, the act did not intend to make such a person liable to be removed. But it is made a presumptive chargeability, so as to put it on the party disputing it to show that she is a person of substance, or, as in *Rex v. Alveley* (post, 837), a person under a contract of hiring and service with another at the time, so as to rebut the presumption. The only cases that materially affect the construction of the clause in question are, first, *Rex v. St. Mary, Westport* (3 T. R. 44, ante, 807), which was the case of a certificated person, who, under the statute 8 & 9 W. III. c. 30, was not removable till actually chargeable: and it was held, that one of the family of the certificated person being pregnant of a child likely to be born a bastard, was not removable under that act. The question was again made in *Rex v. Great Yarmouth* (8 T. R. 68, post, 839), after the passing of the 35 Geo. III., where the residence of a person so circumstanced under a certificate was held to be no objection to her removal. Then came *Rex v. Alveley* (post, 837), where the principal point decided was, that a single woman being with child did not operate such a dissolution of the contract of hiring and service, as to make her removable against the consent of herself and her master. In that case there is one observation attributed to me which I am not prepared to abide by; viz. that where the act says such a person *may* be removed, it does not say that she *shall* be so. Now I do not think that the use of the word *may* there, as contradistinguished from *shall*, makes any difference in the sense. If the party come within the true intent and meaning of the clause as there described, I think the true meaning of the words '*may* be removed,' is, that she '*shall* be removed.' All the statutes respecting the

Otherwise, if it appear that she is a woman of substance, and not likely to bring a burden upon the parish.

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removal of the poor form together one system of law, and it is a condition precedent, if I may so say, that the persons to be subjected to their operation should be in the condition of poverty. When therefore the clause in question says that an unmarried woman with child shall be deemed to be actually chargeable, &c., for the purpose of subjecting them to be removed, it means that persons so situated shall, *prima facie*, only be deemed to be chargeable, and it still leaves it open to show that the party is of substance, so as not to be within the scope and view of the poor laws. Therefore, whether in the form of the order it be said that the woman so circumstanced is deemed to be chargeable, or is therefore chargeable, or that she is chargeable, it is all alike and equally good: and she must be presumed to be in the situation in which she is considered by the legislature: viz. as actually chargeable to the parish where she is inhabiting, and consequently liable to be removed, unless the contrary be shown. Here then it is sufficiently adjudged in the order that the pauper was actually chargeable, so as to make her removable under the act; and it appearing by the facts stated on the appeal that though married, yet that her husband was abroad, and could not have been the father of her child, this was a *prima facie* case to bring her within the sixth clause, and to show that she was actually chargeable within the meaning of the act; and nothing being shown to rebut that presumption, it remains presumptively established that the pauper was within the description of persons liable to be removed." The other judges agreed, and both orders were confirmed.

An order of removal made upon complaint that M. S., the wife of W. S., who is absent from her, is come to inhabit, &c., and is now with child, which is likely to be born a bastard, adjudging the said M. S. to be actually chargeable, was held sufficient.

Rex v. Inskip-with-Sowerby, 5 M. & Sel. 299. Margaret Sykes was removed from Inskip-with-Sowerby to Pilling; and the order stated that Margaret Sykes, the wife of William Sykes, a soldier in the army, and absent from her, is to come to inhabit in Inskip-with-Sowerby, that she is now with child, which is likely to be born a bastard, and that her last legal settlement is in the township of Pilling; and the justices, upon due proof made thereof, and likewise upon due consideration had of the premises, did adjudge the said M. S. to be actually chargeable to Inskip-with-Sowerby, and her settlement to be in Pilling. And then it proceeded to order her removal. The sessions quashed the order for insufficiency of form, because it was not stated in the *complaint that the pauper was become actually chargeable*. The court, without hearing argument, were of opinion that the order of removal was sufficient; for the complaint states the premises from whence the conclusion necessarily arose under the act of parliament (35 Geo. III. c. 101), that the pauper was to be deemed chargeable, and the justices have drawn the conclusion. (See *Rex v. Amphill*, ante, 827, and *Rex v. Stockton*, 2 Nev. & M. 353; 5 B. & Ad. 546, ante, 829.)

A wife cannot be removed to her maiden settlement if the husband has a settlement in some other parish, although that parish cannot be ascertained,

Rex v. St. Mary, Beverley, 1 B. & Adol. 201. Harriet, the wife of William Owen, and their children, were removed from St. Martin, in Beverley, to St. Mary, in Beverley. Order confirmed. Case:—The maiden settlement of Harriet, the wife of William Owen, was in St. Mary, and both his children were born there. No proof was offered that W. Owen had gained a settlement in his own right; but, on the part of the respondents, Ann Rogers, the mother of W. Owen, deposed that she was the wife of a serjeant in the 30th regiment of foot; that she never heard or knew where his place of settlement was; that about twenty-seven years since, whilst the regiment was on the march, she was suddenly taken in labour upon a baggage-waggon; that her son, W. Owen, (the husband of Harriet), was born in the stable of an inn at Ipswich; that she never was in Ipswich before, nor had she ever been there since; that there were several parishes in Ipswich, but that she did not know in which parish the stable was situate, or to what it belonged; and that even if she was now in Ipswich, she could not point out the stable or inn where she was confined. No proof was given of any other endeavour having been made on the part of the respondents to ascertain the parish in which W. Owen was born. At the time of making the order of removal, W. Owen was living with his wife and family in St. Martin, in Beverley. The husband, W. Owen, gave his consent to the removal of his wife and family to St. Mary, in Beverley, but no proof was given of any consent on the part of Harriet Owen to her removal. The

question was, whether Harriet Owen and her children could be removed to the place of her maiden settlement? Bayley, J., "We are of opinion that both the orders in this case ought to be quashed. To justify the confirmation of an order of removal, it ought to appear upon the evidence adduced by the respondents, that the party removed is settled in the parish to which the removal is made; if that do not appear, and *à fortiori*, if the contrary appear, the removal cannot be supported. Now the evidence in this case does not prove that the person removed is settled in the parish of St. Mary, to which she is removed, but in one of the parishes in Ipswich. It is argued, however, that as the respondent's witness did not know in which of the parishes in Ipswich the settlement was, and had proved a maiden settlement in the appellant parish of the wife who was removed, the onus of proving in which of the parishes in Ipswich the husband was born was upon the appellant parish, and that in the absence of such proof, a removal to the wife's maiden settlement was warrantable. We do not concur in this reasoning. Where the respondent's evidence makes out a maiden settlement, and contains nothing to show that any subsequent settlement which would supersede the maiden settlement has been gained, that constitutes a *prima facie* case, and the onus of proof that the pauper was not settled there lies upon the appellants, but not that of proving the precise place where the pauper was settled. It is enough to disprove, by clear evidence, the obligation of the appellant parish to maintain the pauper; and the question may be considered for this purpose as being in substance the same as if there were an issue to be tried between the two parishes, whether the pauper was settled in the parish of St. Mary or not. None of the cases cited in argument go any thing like the length for which the respondents must contend. In *Rex v. Woodford* (*ante*, 316), there was no proof of any settlement but the maiden settlement of the wife. The same was the case in *Rex v. Harberton* (13 East, 312). In *Rex v. Hensingham*, (2 Bott, 85,) there was indeed proof that the husband had told his wife that he was born in Yorkshire, but what a man says as to the place of his birth is not receivable in evidence to prove it; and a similar observation applies to *Rex v. Westerham* (*ante*, 316). The only remaining case cited by the respondents was that of *Rex v. Eltham* (*ante*, 832), where the husband was a Scotchman, and had no settlement of his own. I am not aware of any other case in favour of the respondents. Now what do these cases prove? They prove, at the utmost, that where there is no sufficient evidence of any settlement in the husband, and where the only settlement as to which there is any is the wife's maiden settlement, the wife may be removed to that settlement; but they do not bear upon the point where it appears upon the evidence that there is a settlement in the husband. Upon the ground, therefore, that in this case it appears, upon the respondent's evidence, that the husband has a settlement in a parish at Ipswich, we are of opinion that a removal to the wife's maiden settlement cannot be supported, and that the order of sessions ought to be quashed." Order of sessions quashed. (See this case also *ante*.)

2. Removal of the Wife.

3. REMOVAL OF CHILDREN.

Bucklebury v. Bradfield, 1 T. R. 164. Elizabeth, aged five, John, aged two years and a half, and Sarah Knott, aged one year and a half, were removed from Bucklebury to Bradfield. The order set forth the ages of the paupers, and that upon due proof made thereof, *as well upon the examination of Elizabeth Knott, their grandmother, upon oath*, as otherwise (and so on in the usual form.) Order quashed. Case:—Charles Knott went to Twickenham in 1777, where he married Sarah Slade, who dying in 1784, Charles brought the paupers to Elizabeth, his mother, who was living at Bucklebury in 1785, and told her they were his children, and desired her to take care of them, and he would send money for their maintenance; the paupers remained with Elizabeth about fourteen weeks, but she not receiving any money from her son, and being unable to maintain them, they were removed to Bradfield, who appealed, and Charles was subpoenaed, but did not appear.

3. Of Removal of Children.

Removing nurse children to the settlement of their parents. The order is good, though it takes no notice of the death, nor adjudges the place to which they are removed.

3. *Removal of Children.*

The appeal was adjourned at the next sessions; he not appearing, the appeal was not heard, but adjourned, when the appeal was heard, and the removants proceeded to support the order by the following evidence: David Knott, the paternal grandfather, had his settlement in Bradfield, and his son Charles was born there. It did not appear whether Charles had gained any settlement subsequent to his derivative settlement, nor was any evidence given to identify the paupers to be the children of Charles and Sarah Knott, except as above. In support of the order it was urged, that the paupers being nurse children, ought not to have been removed without their father or mother, unless the order had stated they were dead, otherwise the children might be settled in a different parish from their parents. Another objection was, that the order was grounded on the *examination of the grandmother*, and not on that of the *father*. And there was no evidence produced at the sessions but the grandmother to identify those children, or that the father had not gained a subsequent settlement. The other side was stopped by the court, who were clearly of opinion that there was no objection to the competency of this evidence; and as to the other point, that it was incumbent on the parish of Bradfield to have shown that the father had gained a subsequent settlement. Order of sessions quashed.

In *Rex v. Brington*, 1 M. & R. 431; 7 B. & C. 549, (*ante*, 828,) the Court of King's Bench presumed that the sessions had quashed the order as to the child that had been removed with its mother, as being within the age of nurture.

Bastard not to be removed from the mother whilst a nurse child.

If a mother and child have different settlements, it seems that the bastard child, like all other children, shall go with the mother for nurture until the age of seven years. Thus in *Cripplegate v. Saint Saviour's* (*ante* 274,) it was agreed by the whole court, that the age of a nurse child, so as to go along with its mother, is until seven years of age. So also in *Skeffreth v. Walford* (2 Sess. Ca. 90.) The order was to remove a woman to her settlement, and her bastard child, of two years of age, to another parish, at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, it could not be separated from the mother, by reason of the care necessary to nurture so very young a child, which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And the order was quashed by the court for that reason. But it appears to be settled, that although whilst the child continues with its mother as a nurse child, it is irremovable to its place of settlement, yet the parish where it is legally settled shall maintain such child in the other parish where it is resident with its mother.

To be maintained, whilst a nurse child by its own parish.

Same point.

Rex v. Hemlington, Dougl. 9, n. 2. Case:—Elizabeth, a single woman, with her child Mary, went under a certificate from Hemlington to Darlington, in which last parish she had two bastard children, and there became chargeable. An order being made for the removal of her and Mary to Hemlington, she took the two children who were born in Darlington with her, they being both under the age of emancipation. Two justices made an order on Darlington for the maintenance of the two bastard children, which order, upon an appeal, was quashed. It was urged that there is no statute which gives the justices any authority to make an order for the maintenance of children on a parish where they do not actually reside. Lord Mansfield, C. J. said no authorities have been cited in support of this proposition, and there are many against it; *Rex v. St. Giles's in the Fields* (Burr. S. C. 2); *Rex v. Wangford* (2 Wils. 3; Fort. 307); and *Rex v. Saxmundham* (2 Bott, 18), which is directly in point. The practice is also agreeably to those cases. Aston, J. cited another case, where it was directly held that the parish where the settlement of the nurture child is shall maintain it. Judgment to quash the order of sessions, and confirm the original order by which the parish of Darlington was charged.

There is no difference between bastards and legitimate children under such circumstances.

Shermandbury v. Bolney, Carth. 279. A woman with three children, all under seven, being settled in Shermandbury, married a person settled in Bolney. After the marriage the mother and the three children were sent to Bolney. The parish of Shermandbury, before the marriage, allowed 3s. per

week for three children; and the payment being discontinued after the marriage, on complaint of the parish of Bolney, two justices made an order that Shermandbury should continue to pay the 3s. The sessions, and afterwards B. R., confirmed the order of the justices. And the court said, "This case is within the equity of the statute for the relief of the poor, and there is no reason that Shermandbury should be discharged of the children by their mother's marriage. The inconvenience, when the two parishes are at a great distance from each other is only similar to what is experienced on appeals brought on removals from parishes at a greater distance. As to the method of enforcing the order, it may be done by indictment, or perhaps the parish officers in whose behalf it is made might maintain a special action of *assumpsit* against those upon whom it was made." (*Vide Rex v. Toms, Dougl. 401.*) In *Rann v. Green* (1 Cowp. 474), the court held, that when persons acting under a *private* act of parliament, make an order by authority of such act for the payment of money, the law raises an *assumpsit*, and the same rule must hold in the case of a public act. (a)

3. *Removal of Children.*

4. OF REMOVAL OF SERVANTS.

4. *Of Removal of Servants.*

It has already been observed that the justices have no power, upon the complaint of the parish officers, to remove a servant from his master, because that would be to dissolve the contract betwixt the master and his servant, which can only be done upon the complaint of the master or servant. Therefore if a female servant happens to be pregnant, and the child is likely to be born a bastard, yet if her master is willing to keep her, the parish cannot remove her; whilst, on the other hand, the master, if he pleases, may complain to a justice of the peace that she is less able to perform the service, and the justice (if he sees cause) may discharge her; and thereupon the parish officers, having obtained the order of two justices, may remove her.

Whether the servant may be removed from the master.

Rex v. Bleworth, Burr. 302, 304. Where a servant was hired for three years on certain conditions, Lord Chief Justice *Lee* put an end to the argument on the contract by saying "How could the justices remove him out of the service?" It appears that the man was actually in the service at the time of the removal. And the court quashed the order.

In *Farrington v. Witty, 2 Salk. 527; 2 Bott, 295*, it was determined that excepting on complaint of the master, a servant could not be removed from his master's service, although the parish officers did complain. (See *Rex v. Brampton, infra.*)

Servant not removable from master's service.

Rex v. Marlborough, 12 Mod. 402; 2 Bott, 42. An order of removal was made of a female servant, who within her year of service was pregnant of a bastard. The court: "If one hire a woman for a year, and before the year's end she is got with child, she shall not for that be removed, but shall serve out her time. This however is good cause for discharge from her service; and after her discharge she might be removed."

Discharging a female for bastardy is a dissolution.

Rex v. Brampton (ante, 439.) A female servant may be discharged by her master for being with child, and may then be removed to her settlement.

Rex v. Alveley, 3 East, 563. Jane Hinson, single woman, was removed from Kinver to Aveley by an order stating "That Jane is with child, and is therefore deemed chargeable to K., and the justices upon proof, &c. &c." did adjudge the same to be true, &c. &c., proceeded to adjudge the settlement. Order confirmed. Case:—The pauper was settled in Alveley, and some time previous to Michaelmas, 1801, hired herself for a year to E. C., of K., for a year. She entered and served till September 2d, 1802, when she being about seven months gone with child, the parish officers of K. insisted upon her going before two magistrates for the purpose of being examined as to the place of her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaints against her, he did not consent to her being

A single woman serving a master under a contract of hiring and service, cannot, though pregnant of a child which will be born a bastard, be removed from her service, against her consent and his.

(a) See also *Settlement by Birth (ante, 274.)*

4. Removal of Servants.

taken away, but objected to it, as did the pauper herself, who was perfectly able to do her work. After her examination had been taken, she returned to her master's service, and on the following day the parish officers removed her under the order from Kinver to A., telling her at the same time that she might return to Kinver. Lord *Ellenborough*, C. J. "If the order of removal were good, no doubt it would operate to dissolve the contract. In *Rex v. Kenilworth*, 2 T. R. 598, (*post*) the order of removal being unappealed from, was deemed valid; but this is now under appeal, and may be controverted. And that brings it to the question, whether the order was properly made? Was it not the meaning of the act to prevent the removal of persons until actually chargeable, who were before removable, if likely to become so; but not to make persons removable who were not proper objects of removal before that act? Could it be meant that a person in this situation should be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish? Is there any instance to be found in the books before this act, of a woman, under these circumstances, being a person of substance, and yet deemed to be removable? The substance of a person so situated repels the idea of her being chargeable; and the act did not mean to make any one removable who was not so antecedently to the passing of the act. The general provision is, that no person shall be removable till actually chargeable; and the 6th section introduces an exception to that general rule, leaving the person so circumstanced to the operation of the law, as it stood before the passing of the act." [The respondent's counsel observed, that there were no facts stated in the case to show that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had not exercised their judgment upon that fact; on the contrary, they adjudge her to be chargeable, and before the act in question, such a person was removable.] Lord *Ellenborough*, C. J. "There is nothing of that sort stated in the case, nor any thing in the order itself to show that the magistrates adjudged her to be chargeable otherwise than as a consequence of law in their understanding of the act of parliament; they adjudge *that she is with child*, 'and is therefore deemed chargeable to the parish of Kinver.' But though the act says that such a person shall be 'deemed and taken to be actually chargeable;' yet that must be understood to be *secundum subjectam materiam*, or as the act itself expresses it, 'chargeable within the true intent and meaning of this act,' which I have before explained. It lies upon the respondents to show, that before this passed, the mere circumstance of a single woman in the service of another, being with child, operated as a dissolution of the contract, and made her liable to be removed against the consent both of the master and servant." (a)

5. Of Removals under 35 Geo. 3, c. 101, s. 6, of Women with Child. (b)

Order adjudging merely that the woman removed was *with child and unmarried*, without drawing the conclusion that she was chargeable, is bad.

5. OF REMOVALS UNDER 35 GEO. III. c. 101, s. 6, OF WOMEN WITH CHILD. (b)

See the statute, *ante*, 823, 824; see *Rex v. Tibbenham*, *ante*, 832, and *Rex v. Sowerby*, *ante*, 834, and *Rex v. Alveley*, *ante*, 837.

Rex v. Holm, *East Waver Quarter*, 11 *East*, 381. An order of removal of E. M. from Oulton Quarter, in W. to Holm, *East Waver Quarter*, in Holm Cultram, stated "That E. M., single woman, is *with child and unmarried*, we the said justices do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of the said E. M. is in the said Holm, *East Waver Quarter*, &c. &c." Order confirmed. The objection to the order was "That it ought to have adjudged that the pauper was *actually chargeable*, and that it was not sufficient merely to state that she *was with child and unmarried*." *Rex v. Alveley* (*ante*, 837,) was cited. Lord *Ellenborough*, C. J. "If it were an irrefragable conclusion that being a single woman and with child,

(a) See observations on this case, *ante*, 833.

(b) It has been supposed that the constructive chargeability under sect. 6 of 35 Geo. 3, c. 101, was repealed by 4 & 5

Will. 4, c. 76, s. 69. See observations in *D'Oyley and Williams'* edit. of Burn, tit. "Poor," 1126, 1127, 1140, 1141, But see *ante*, 824, note (a).

the party removed must be deemed to be chargeable within the meaning of this statute, then this order would be good; otherwise the *justices* ought to have drawn that conclusion, in order to show that in their judgment she was a proper object of removal within the poor laws. But consistently with this order, the party might have been a single woman with child, worth 10,000*l.*, or she might have given the most ample security to the parish against any charge which could be thrown upon them. The statute in question first gives the general rule that no persons shall be removed before they are actually chargeable. It then says that single women with child shall be *deemed and taken to be* actually chargeable, within the true intent of the act. But still the *justices* ought to draw the conclusion that she is within that general rule, otherwise every single woman with child, whatever might be her substance, might be removed by the parish officers. Being unmarried and with child, such a person is presumptively chargeable, from the strong probability of the fact that she must be so; but there may be circumstances, such as the substance of the party, or the giving a complete indemnity to the parish, which may exclude that presumption. Now every circumstance of that sort might have existed in this case, and yet the order, as it is framed, be true. In *Rex v. Diddlebury* (*infra*) the justices deemed her to have become chargeable; but she could not have been deemed to be chargeable if those circumstances had existed in her instance. It ought to appear by the order that the justices have exercised their judgment upon the matter, and repelled the existence of such circumstances by the adjudgment that she was chargeable, in order to show that she was a proper object of removal within the meaning of the law."

Rex v. Diddlebury, 9 East, 398. Upon complaint "That Ann Evans, single woman, had come to inhabit, &c. &c., and is, by being pregnant, deemed to have become chargeable to the said parish of T." two justices, "upon due proof made thereof, did adjudge the same to be true." Case:—The pauper, Ann Evans, being a single woman, legally settled in D., and becoming actually chargeable to T., within the meaning of the 35 Geo. III. c. 101, s. 6, by being pregnant with a child who had since been born a bastard, was removed from T. to Diddlebury, and the pauper appearing to be a labourer without substance, the mother of other bastard children, and not a hired servant, was properly removed as actually chargeable. This case was argued immediately after *Rex v. Tibbenham* (*ante*, 832); they both stood over, and after giving judgment in that case, Lord Ellenborough, C. J. said "That there was little more to add with respect to this, than that the orders should be confirmed. On the facts of the case, as bringing it within the general policy of the poor laws, and the words of 35 Geo. III., there could be no doubt, and with respect to the form of the order of removal, the premises are stated, as in the statute itself, from whence the conclusion is drawn; and therefore all is stated which the statute requires."

Rex v. Great Yarmouth, 8 T. R. 68. Mary Pestile, widow, was removed from Great Yarmouth to Ditchingham. Order quashed for informality, but no case stated. In the order of removal it was recited and adjudged, that the pauper was with child which was likely to be born a bastard; that she was living in Great Yarmouth, not having gained a settlement there; that she was deemed to be a person actually chargeable to Great Yarmouth, and that her place of settlement was at Ditchingham; without negating her having a certificate from any parish. The question intended to be raised was, whether or not the 35 Geo. III. c. 101, extends to an unmarried woman who is residing under a certificate? *Per Curiam*: "The orders which alone are before the court are scarcely sufficient to raise the question that (it is said) was meant to be agitated; but even if they were, this pauper comes within the words of the statute alluded to, which are general, 'every unmarried woman, &c.;' and also within the reason of the act. This clause seems to have been introduced for the very purpose of remedying what was before an apparent defect in the poor laws; for before that act passed, a certificated person in this situation could not have been removed, although the child when born would be settled in the certificated parish. Therefore as the words of the statute are sufficiently comprehensive to include this case, there

5. Removals
under
35 Geo. 3.

But an order stating that A. E., single woman, was, by being pregnant, deemed to have become chargeable, &c., is good.

An unmarried woman, being pregnant, may be removed, though she be residing under a certificate.

5. *Removals
under
35 Geo. 3.*

is no reason why we should narrow or abridge the construction of them, so as to prevent their extending to a case that wanted the remedy." Rule absolute.

6. *Removal of
Casual Poor.*

6. OF REMOVAL OF CASUAL POOR.

We have before considered the duty of overseers to *relieve casual poor* in the parish where they have sustained any accident or have been suddenly taken ill, (*ante*, 88 to 100,) and incidentally how far the power of removal, under the 13 and 14 Car. II. c. 12 (*ante*, 820,) or 35 Geo. III. c. 101 (*ante*, 823), is in such cases taken away or suspended during such illness. Reference to the statutes and decisions in that part of the work (*ante*, 88 to 100) must be had when any question as to the removal of such paupers may occur.

If a pauper meets with an accident in a particular parish, that parish is bound to provide for him as casual poor, until he be cured; nor can they relieve themselves by removing such pauper into an adjoining parish, or his proper parish; (*Tomlinson v. Bentall*, 8 D. & R. 493; 5 B. & C. 738, *ante*, 90, and *Rex v. Bury*, 10 East, 25, *ante*, 92); for no person is removable from the parish where he is, unless under some positive enactment, and he is not, being within the enactment in the statute Car. II. Per Lord *Ellenborough*, in 10 East, 25.

But a pauper who had been sent backwards and forwards from one parish to another, and been occasionally relieved by both, was holden removable.

Rex v. Birmingham, 14 East, 251. Mary Hoppins and her children were removed from Feckenham to Birmingham. Order confirmed. Case:—The pauper was resident in the parish of Inkberrow, in Worcestershire, renting a house there, and receiving relief from I. Upon applying, as usual, for this relief to the officers of the parish, it was refused her, and she was desired to go to the officers of Feckenham, an adjoining parish, in which some of her husband's relations had resided; this she did: F. refused relief, and sent her back to I. Upon her return to I. and again applying there for relief, they refused and desired her to apply again to F.; and when she expressed an unwillingness to do so, one of the overseers of I. took her to F., without any order of removal, and told her not to return again to I. Upon her being thus brought to F. the officers of F. relieved her, and at the same time threatened to send her to prison if she returned to I. She remained in F. for eight or ten days, not having previously had any abode there; at the end of that time she was removed by an order of two magistrates from F. to Birmingham. The question was, whether the pauper, being in the parish of F. under such circumstances, was liable to be so removed? *Rex v. St. James, Bury St. Edmund's* (*ante*, 90), was cited to show she was irremovable as casual poor. Lord *Ellenborough*, C. J. "That was a very different case. This was the case of a starving vagrant, in whichever of the two parishes she was, who was going backwards and forwards between them, and would have been starved if she had not received temporary relief from one or the other. She was liable to be removed from either. How then can this oscillation between the two parishes affect the order of removal to her proper parish?" Orders confirmed.

Foreigners.

Foreigners, who have not gained a settlement, are to be relieved as casual poor.

Must be maintained where they are found.

Cowred's case, T., 6 W. & M., Comb. 287; 2 Bott, 17. A Dutchwoman and her two children landed at Harwich from Holland, and removing to another place, were sent back to Harwich by an order of two justices. *Eyre, J.*, (*Holt, C. J.*, being absent), said, "You must keep them when you have them for aught I know; for it seems to be a case omitted out of the statute." Order quashed.

7. *Of the Removal
of Poor Persons,
&c.*

7. OF THE REMOVAL OF POOR PERSONS BORN IN SCOTLAND, IRELAND, ISLES OF MAN, AND SCILLY.

The repealed enactments relative to removal of

The 17 Geo. II. c. 5, and 59 Geo. III. c. 12, and 5 Geo. IV. c. 83, contained enactments relating to the removal of poor persons born in Scotland

and Ireland, and which enactments, with some decisions thereon, may be found *ante*, 96 to 100.

The following are further cases on these acts:—

Rex v. Benett and Broughton, Esqs. Justices of Middlesex, 2 Bar. & Adol. 712. Catherine Hines, an Irish pauper, being pregnant, was at her own request on the 9th of March, 1831, admitted into the workhouse belonging to the parish of St. Luke, Middlesex, and on the 23d was there delivered of a male bastard child. She resided in the workhouse from the time of her admission, and was during that time chargeable to the parish. On the 6th of May the parish officers took her before the defendants, William Benett, Esq. and Robert Edwards Broughton, Esq., two magistrates for the county, and required them by a pass under their hands and seals to cause her to be removed, and her infant child also, for the purpose of nurture. They refused so to do. A rule *nisi* was afterwards obtained for a mandamus to compel them to sign an order or pass for the removal of the pauper with her male bastard child (for nurture only) from the said parish of St. Luke to Ireland, in the manner directed by the statutes in such case made and provided. Lord Tenterden, C. J., now delivered the judgment of the court. "This case was very well argued in the course of this term. The difficulty is in saying what precisely ought to be done under the statute 59 Geo. III. c. 12, s. 33, which provides for the removal of Irish and Scotch paupers in the mode pointed out as to rogues and vagabonds, by 17 G. II. c. 5, s. 13, 14. It was said in support of the rule, that where a woman settled in one parish in England had a bastard child born in another parish, also in England, it had been usual to remove the child with the mother for nurture, and that it was then taken care of by the parish to which it was sent, at the expense of the parish where it was settled by birth. On the other hand, it was contended, that the child having a settlement in the parish where it was born, the act of parliament gave the justices no power to remove it; and it was observed, that where a child was removed with its mother from parish to parish in England, no difficulty arose, because one parish or the other was obliged to give it present support, but that in Ireland, where there are no poor laws, there was no parish which could be called upon to nurture the child, nor any one to enforce maintenance from the place of its birth. There was much weight in those observations. There may certainly be great inconvenience in separating the mother and child; still, if the law gives no authority to remove the child, that inconvenience cannot be avoided while the law continues as it is. And it is clear that by 59 Geo. III. c. 12, s. 33, no such power is given. That section requires two justices, upon complaint that any person born in Scotland or Ireland hath become chargeable to a parish by himself or herself, or his or her family, to enquire whether he or she, or any of his or her children, have any settlement in England; and if it shall be found that such person born in Scotland or in Ireland has no settlement in England, and has become chargeable to such parish by himself, or his or her family, then by a pass to cause such poor person, his wife and such of his or her children *as shall not have gained a settlement in England*, to be removed to the place of his or her birth, in the manner directed by the 17 Geo. II. c. 5, s. 13 and 14. The statute therefore authorizes and requires the justices to remove to Ireland the mother who has not gained any settlement in England, but it gives them no power to remove the child which has acquired a settlement there by its birth. There may undoubtedly be hardship in removing the mother without the child, but that must be submitted to, for the act is imperative. The rule, therefore, must be made absolute as to the removal of the mother, and discharged as to that of the child." Rule absolute for the removal of the mother, discharged as to that of the child.

Rex v. Mile-end Old Town, 5 Nev. & Man. 581. Appeal against an order of removal of Ann Cotterall and her bastard child from St. Leonard's, Shoreditch, to Mile-end Old Town. Case:—Ann Cotterall, aged 18 years, who has never done any act to gain a settlement in her own right, was born in wedlock, in Mile-end Old Town of Irish parents who have not gained any settlement in England. On the 20th August, 1834, she was delivered of a

7. Of the Removal of poor Persons, &c.

paupers born in Scotland, Ireland, Isle of Man, and Scilly.

Under the statute 59 G. 3, c. 12, s. 33, an Irish female pauper having a bastard child born in a parish in England, and within the age of nurture, may, on becoming chargeable, be passed to Ireland though the child cannot be sent with her, the act not authorizing the removal of any settled person.

The daughter of Irish parents who had gained no settlement in England, she and the family are removable to Ireland under 3 & 4 W. 4,

7. *Of the Removal of poor Persons, &c.*

c. 40, though she was above 18 and born in England. The provisions of this act are not affected by 4 & 5 W. 4, c. 76, s. 56, limiting the age during which a parent is considered liable for relief given to his child to 16.

Where the daughter of an Irish pauper is removed with her father to Ireland under 3 & 4 W. 4, c. 40, her bastard child born in England cannot be removed with her.

male bastard child in St. Leonard's, Shoreditch, in the house of her father, with whom she continued to reside as part of his family, occasionally going out charing; and on 21th August, 1834, application was made by her mother to the overseers of St. Leonard's, Shoreditch, for relief for Ann Cotterall and her bastard child only, upon which the order appealed against was made. The question for the decision of the court is, whether reference being had to the provisions of 3 & 4 Will. IV. c. 40, s. 2, and 4 & 5 Will. IV. c. 76, ss. 56 & 71, the pauper and her bastard child were settled in Mile-end Old Town. On a subsequent day in this term, the judgment of the court was delivered by Patteson, J., (Lord Denman, C. J., being absent) as follows:—"The question in this case is, whether the removal of the pauper, with her infant bastard child, to the appellant hamlet can be sustained; and that depends upon this further and principal question, whether she ought not to have been removed with her father to Ireland, under the provisions of 3 & 4 Will. IV. c. 40, s. 2. The case states that the pauper was born in the appellant hamlet, of Irish parents, who have gained no settlement in England. They, therefore, are directly within the section of the statute above referred to, if at the time of this order made the father had become chargeable to the parish of St. Leonard's, Shoreditch, provided the effect of it has not been altered by the subsequent statute of 4 & 5 Will. IV. c. 76. And it seems to us that the pauper's father was so chargeable at the time in question. The language of the 2d section of the first-mentioned act, with reference to this subject, is, 'hath become chargeable by himself or herself, or his or her family.' Now the pauper was, at the time of her removal, living with her father as a part of his family, having done no act, nor having contracted any relations inconsistent with that character. Relief therefore to the pauper under her father's roof, in the manner stated in the case, did render the father removable to Ireland, and as a consequence the daughter also. It is now to be considered how far the former act is affected by the 4 & 5 Will. IV. c. 76. And it is at once observable that the object of the two statutes is perfectly distinct. The former is confined merely to making provisions for the removal of certain persons born in Ireland, Scotland, &c. who have gained no settlements in this country. No question affecting the removal or settlement of persons born in England is touched or attended to; whereas the objects and provisions of the latter statute are purely and exclusively English. Various and important alterations are made in the laws respecting the gaining of settlements, the duty of overseers, and the management of the poor; all of which are of necessity applicable and confined to England. It is observable also, that the title of the act itself purports to concern England and Wales, and them only; nor do we perceive any regulation which has the slightest relation to Ireland, Scotland, &c., the places enumerated in the first mentioned statute. We think therefore that the sound construction and interpretation of the two statutes is to hold them to be in effect and operation, as they are in object, wholly separate and distinct. This being so, we are of opinion that the provision in the 56th section of 4 & 5 Will. IV. c. 76, as to the age up to which the parent is to be deemed answerable for relief given to a child, viz. sixteen, (whatever might have been its effect upon relief given to a child above that age, as to the chargeability of the parent, if the parties had been English,—on which we give no opinion,) does not apply to the present case, depending, as it has been already stated it does, on the 3 & 4 Will. IV. c. 40, s. 2. We think therefore that the character of the daughter's residence with the father, and his liability to maintain her and to be considered chargeable by relief given to her, are to be considered as they would have been if the latter act had not passed. It is true that in *Rex v. Whitehaven* (ante, 99,) the sessions had quashed an order of justices removing an Irish woman pregnant, and living with her parents unemancipated, to her birth settlement, upon the ground (as stated in the case) that, he ought to have been sent with her parents by a pass to Ireland under the 59 Geo. III. c. 12, (which has the same expressions as to the chargeability of the father as the 3 & 4 Will. IV. c. 40, viz. 'became chargeable by himself or his family:') and this court quashed the order of sessions

upon, as it seems, but little discussion, and with not very much consideration. Upon that case two things are to be observed; first, that the question how far the woman, circumstanced as she was, could gain a settlement by birth, was not noticed at all; whereas, in the case of *Rex v. Leeds* (*ante*, 97,) that question was considered, and it was held that birth in such case gave no settlement,—next, that the decision proceeds expressly upon the ground that under the 59th Geo. III. the chargeability contemplated by the statute was the actual asking for relief, and not the constructive chargeability (by pregnancy) under the 35th Geo. III. c. 101; upon which it may be sufficient to observe, that the defect upon which the court held the decision of the sessions wrong, does not exist here. Relief in this case was actually asked for and given before the order of removal was made. It remains to be added, that according to the authority of *Rex v. Bennett and Broughton* (*ante*, 841,) the bastard in this case cannot be removed with the mother to Ireland. This however is a circumstance not necessary for our decision, which is, that the removal of the pauper, which should have been to Ireland, having been made to the appellant hamlet, is wrong; and that therefore the order of removal and the order of sessions confirming the same, must be quashed." Order of sessions quashed.

The 3 & 4 W. IV. c. 40, s. 1, after reciting that it was expedient to amend the laws relating to the removal of poor persons born in Scotland and Ireland, the Isles of Man and Scilly, and chargeable in parishes in England, and to make other provisions in lieu thereof, then repeals so much of the Vagrant Act, 17 Geo. II. c. 5, 59 Geo. III. c. 12 and 5 Geo. IV. c. 83, s. 2, as authorizes two justices upon complaint of *overseers of any parish, township, or place, maintaining its own poor*, by an order of removal, instead of a pass, to remove *by sea or land any chargeable poor born in Scotland or Ireland, or in the Isles of Man or Scilly, at the expense of the complaining parish, but to be repaid by the county in which it is situate*. Sect. 3 enacts that the justices at sessions shall direct how the parties shall be removed. (a) Sect. 4. Justices at Quarter Sessions are to make rules for carrying the act into execution. Sect. 5. Churchwardens and overseers are to be repaid their expenses out of the county rate. Sect. 6 directs how expenses are to be defrayed of removing poor persons within London. Sect. 7 declares how expenses are to be defrayed when the parish is situate in any city or place not contributing to the county rate. Sect. 8 enacts that the act shall continue in force till 1st May, 1836, and to the end of the then next session of parliament. A Schedule contains the form of the order of removal, and the form of examinations.

7. Of the Removal of poor Persons, &c.

3 & 4 W. 4, c. 40, repeals prior acts as to Scotland, Ireland, and the Isles of Man and Scilly, and introduces new provisions and forms. See the statute, post, Appendix.

8. OF THE REMOVAL OF POOR PERSONS BORN IN JERSEY AND GUERNSEY.

We must here refer to statute 11 Geo. IV. c. 5, (*ante*, 97) repealing so much of 17 Geo. II. c. 6, as relates to the removal of vagrants, and of 59 Geo. III. c. 12, and of 5 Geo. IV. c. 83, as relates to the passing and removing vagrants and poor persons born in *Jersey and Guernsey*. See enactment 11 Geo. IV. c. 5, and cases thereon *ante*, 97 to 100.

8. Of the Removal of Poor Persons, &c.

11 Geo. 4, c. 5, repealing 17 Geo. 2, c. 5, and 59 G. 3, c. 12, and 5 G. 4, c. 83, as to Jersey and Guernsey.

9. OF SOLDIERS, OFFICERS, MARINERS, AND MARINES.

By 3 Geo. III. c. 8, *officers, mariners, soldiers, and marines*, who had served since 29th of November, 1748, and not deserted; and by 42 Geo. III. c. 69, the like persons who had served since 16th of July, 1784, and by 42 Geo. III. c. 60, s. 3, and 42 Geo. III. c. 90, s. 75, all *militia-men*, being married men, who had personally served in actual service for five years; and by 56 Geo. III. c. 67, all such persons as aforesaid, who had been employed since 22d of June, 1802, and also all *fencibles* who had served five years, and been honourably discharged, and also their wives and children, might set up such trades as aforesaid, without any molestation by reason of the using of

9. Of Soldiers, Officers, Mariners, and Marines.

(a) The third and following sections are altogether new.

9. *Of Soldiers, and Mariners.* certain trades, nor should they, or their wives or children, *during the time they shall exercise such trades*, be removable to their place of settlement until they shall become actually chargeable.

In *Rex v. Gwenop* (3 T. R. 133), it was determined that working as a husbandman was not a trade within the meaning of the above act, and such persons are therefore removable.

However, 35 Geo. III. c. 101, has rendered these provisions unavailable, as far as respects removals, as that act provides that no person shall be removable *till actually chargeable*.

Militia men, &c.

By 4 & 5 Will. IV. c. 76, s. 6, so much of 43 Geo. III. c. 47, is repealed as authorized relief to be given to the wives and families of substitutes, hired men, or volunteers of *militia*; and also so much as prevents such families from being removable to their place of legal settlement, or sent to any workhouse, by reason of their receiving any allowance or being chargeable.

10. *Woolcombers not removable.*

Persons who have served apprenticeship to any branch of the woollen manufactures, and their wives and families, may set up and exercise any trade in any place in Great Britain, &c.

Not removable.

10. WOOLCOMBERS NOT REMOVABLE.

By 49 Geo. III. c. 109, s. 5, it is enacted, "That all such persons who have served an apprenticeship to any branch of the woollen manufacture, or who are by law entitled to use and exercise the same, and also the wives and children of such persons, may set up and exercise such trade, or any other trade or business which they are apt and able for in any town or place within Great Britain, without any let, suit, or molestation of any person or persons whatsoever, for or by reason of the using of such trade: *nor shall any such person, or their wives or children, during the time they shall exercise such trade, be removable from such respective place or places to his, her, or their last legal place of settlement*, by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such person, or the wife or child of any such person, shall be sued, impleaded, or indicted in any court whatsoever within this kingdom, for using or exercising any such trade as aforesaid, then the said person, or the wife or child of any such person, making it appear to the same court where they are so sued, impleaded, or indicted, that they have served a legal apprenticeship to the said trade as aforesaid, or that he, she, or they, is or are the wife or wives, child or children, of such person or persons who shall have so served a legal apprenticeship as aforesaid, shall upon the general issue pleaded be found not guilty in any plaint, bill, information, or indictment exhibited against them; and such persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information, or indictment, and shall have a verdict pass against him, or become nonsuit therein, or discontinue their said suit, such person or persons shall pay unto such persons who have served an apprenticeship to, or who may be entitled to exercise any branch of the woollen manufacture, or the wife or child of such person respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and juries before whom any such suit, information, or indictment shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto, any statute, law, ordinance, custom, or provision to the contrary in anywise notwithstanding."

III. Of the Order of Removal, Suspension, and Execution of it.

1. Of the Place from and to which a Removal may be.
2. On the Complaint of Whom.
3. Of the Justices, their Style and Jurisdiction.
4. The Hearing and Examination.
5. The Form of Order of Removal.
 1. The County.
 2. Description of Paupers.
 3. That they are Chargeable.
 4. Adjudication.
 5. To whom Directed.
6. Time and Manner of Serving it.
7. Of Suspending Orders of Removal.
8. Of Filing Order of Removal, &c.
9. Penalty and Punishment for not Observing Order.

1. Place from and to which an Order of Removal may be made.

1. PLACE FROM AND TO WHICH AN ORDER OF REMOVAL MAY BE MADE.

The Forest of Dean v. Linton, 2 Salk. 487; Fol. 96, 97; 2 Bott, 688. If a place be extra-parochial and hath no overseers the justices cannot remove from thence, because there are none either to complain or to convey; but the justices ought first to appoint overseers and then to remove. (But see *Rex v. Mereval*, Burr. S. C. 661.)

There can be no removal from an extra-parochial place where there are no overseers.

Bridewell v. Clerkenwell, 2 Salk. 486; Carth. 515; 1 Ld. Raym. 549. H. served seven years to a hemp-dresser in the precinct of Bridewell, and afterwards lived in Clerkenwell, without gaining a settlement, and the justices removed him to Bridewell as his last legal settlement, by an order which set forth Bridewell to be an extra-parochial place. Holt, C. J. "If a place is extra-parochial, and has not the force of a parish, the justices have no authority to send any man thither; and so it was resolved in the case of Sir J. Osborn. Possibly a place extra-parochial may be taxed in aid of a parish, but a parish shall not in aid of that. This is *casus omissus*." Order quashed.

Paupers not removable to or from extra-parochial places.

Rex v. Tamworth, Cald. 28; 2 Bott, 633. T. Goff and family were removed from the hamlet of Bolehall and Glascote to the parish of Tamworth, adjudging their settlement to be at Sirescote, in the parish of Tamworth, and ordering the overseers of Tamworth to receive them. Order confirmed. The pauper was hired for a year, and served that year at Sirescote, which is a hamlet consisting of one house only, and between three and four hundred acres of land; but had never contributed to the poor of the parish of Tamworth, nor had ever been assessed thereto; but had been always assessed and paid to the support of the church of Tamworth. No overseers had ever been appointed for the hamlet of Sirescote. The pauper and his family were delivered to the churchwardens of the parish of Tamworth. It was insisted, that the circumstance of the hamlet never having contributed towards those burthens which the law threw upon the whole parish was immaterial, and that this place could never be considered as a vill within the 13 & 14 Car. II. c. 12, there being only one house, and no overseers, and that this was a part of the parish. On the other side it was contended, that this was a distinct vill, independent of the parish, and to which no pauper could be sent until it had officers duly appointed: that the justices had stated this to be a hamlet, and adjudged, that the pauper had therein gained a settlement. By Lord Mansfield, C. J. "There is no doubt at all: the place is averred to be within the parish where the hiring and service were had and performed, and it has no township or vill within the stat. of Car. II. where officers are appointed, and therefore the justices could not remove the pauper there; here are no overseers, no separate economy: the adjudication is to Sirescote, as part of the parish of Tamworth." The other judges concurred. Both orders affirmed.

Removals to a hamlet sustained, as a removal to the parish of which the hamlet was part.

Rex v. Saughton-on-the-Hill, 2 B. & Ald. 162. Removal from St. Bridget, Chester, to Saughton-on-the-Hill. Order confirmed. Case:—The pauper,

Where the pauper had been a

1. *Place from and to which an Order of Removal may be made.*

settled inhabitant in the township of A., and had subsequently acquired a settlement in the township of B., which township had since been extinguished: Held, that he could not be removed to A., or to any other parish.

Where a district previously extra-parochial, was by act of parliament made a township, and it was provided, that from thenceforth it should maintain its own poor and repair its own roads, and have the like powers, privileges, and immunities, and be subject to the same regulations as other townships within the county: Held, that this clause was prospective only, and that a bastard born within the district previously to passing the act, was not settled there.

Joseph Gill, being settled in Saughton-on-the-Hill, about twenty years ago acquired a subsequent settlement by renting a tenement in the township of Gloverstone, in the parish of St. Mary-on-the-Hill, in the city of Chester, in which parish there are several townships, each separately maintaining its own poor. Of these townships Gloverstone was one, and was situated in the county palatine, and not in the city. At the time the pauper obtained a settlement in Gloverstone it was a township, having overseers, and maintaining its own poor, which continued to be the case until about ten years ago, when all the houses in the township were taken down for the purpose of enlarging Chester castle. There are now no buildings in the township of Gloverstone, except part of the courts of the county, and some barracks and other buildings belonging to the Barrack Board. No overseers have been appointed for the township of Gloverstone for the last ten years, and there is no place within the township inhabited by persons capable of being appointed overseers. *Abbott, C. J.* "The authority of magistrates to remove paupers exists only and is derived from the express provisions of an act of parliament; and in a new case the best mode for the court is to form their judgment on the very words of the act. There may be many cases where a pauper having no settlement in the place where he may happen to be, may still not be removable from it; either because he has no settlement at all, or because the parish officers are not enabled to discover the place of his settlement. The words of the act are, that any two justices of the peace may by their warrant remove and convey persons likely to be chargeable to the parish where he or they were last legally settled. It is, therefore, enough for the court in deciding this case to say, that Saughton is not the parish where the pauper was legally settled, inasmuch as he appears to have subsequently acquired a settlement in Gloverstone, by which the former settlement was extinguished. The justices, therefore, in this case had no authority to remove the pauper; and the sessions have done wrong in confirming their order." *Bayley and Holroyd, Js.* concurred.

Rev v. Oakmere, 1 D. & R. 427; 1 D. & R. Mag. Ca. 109; 5 B. & Ald. 775. John Bradford was removed from Over Tabley to Oakmere. Order confirmed. The township of Oakmere was before and until the passing of a certain act of parliament, in the fifty-second year of his late Majesty, part of the forest of Delamere, in the county of Chester, and an extra-parochial place. By that act, intituled, "An Act for Inclosing the Forest of Delamere, in the county of Chester," the forest was in December, 1819, duly divided into four separate townships, of which Oakmere was one. Since that time overseers of the poor have been duly appointed for the township of Oakmere. The pauper, John Bradford, was born many years ago, a bastard, in Oakmere, whilst it was an extra-parochial place, and part of the forest of Delamere. The question for the opinion of the court was, whether such order of removal to Oakmere, as the birth-place of the pauper, could be sustained? The following were the clauses in the local act on which the question depended: "And be it further enacted, that the district called or known by the name of Delamere Forest, and all such lands lying contiguous thereto, as are now extra-parochial, shall, as soon as the moiety of the said forest, which is hereby directed to be allotted to and amongst the persons enjoying rights of common thereon, shall have been so allotted, divided, and inclosed, be and be deemed and taken to be a parish, and called and known by the name of Delamere parish, and shall for ever thereafter be and be deemed and taken to be a rectory. And be it further enacted, that the said commissioners shall, and they are hereby authorized and required to, divide the said parish into two or more townships, to be called and distinguished by such names as the said commissioners shall appoint; and when the same shall be so divided, each and every such township shall, from thenceforth for ever thereafter, provide for its own poor, make and maintain its own roads, and have, enjoy, and be vested with such and the like powers, privileges, and immunities, and be subject to the same regulations as are incident to, and as are had, held, and enjoyed by the several other townships within the said county of Chester, by the laws and statutes of that part of the united king-

dom of Great Britain and Ireland called England." *C. a. v. Abbott, C. J.* "This case arises on the act 52 Geo. III. for inclosing the forest of Delamere, and the question is, whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township, with regard to settlements; or only as becoming so from the time of its creation under the act, and as if it had formerly been wholly uninhabited? And we are of opinion that the latter is the true construction and effect of the statute. If the former construction should be adopted much inconvenience and litigation might ensue. Many parishes wherein paupers have been considered as legally settled, and have accordingly been maintained, might relieve themselves from their burden, by removing to this new township not only illegitimate persons born within the district whereof the township consists, but also many of those who had been servants, or apprentices, or had rented tenements of the yearly value of 10*l.* within it. By such removals a heavy burden might be thrown at once upon the new township. It is true, on the other hand, that the new township, having now overseers, may remove persons which the inhabitants of the district could not previously do; but then the inhabitants were not previously under the same legal obligation to maintain the poor who might be found within it as a parish or township; the consequence of which must have been, that such poor would in general find their way without removal into those parishes or townships that were compellable to maintain them, so that the new power of removal would not be likely to afford a relief commensurate with the new burden; and the former want of the power of removal might have the effect of charging this new township with the maintenance of persons under circumstances, in which, if the district had been previously a township, the inhabitants might have taken care to prevent the burden from falling upon them, as by the removal of unmarried pregnant women, or of persons coming to settle on tenements under 10*l.* a year, especially before the statute 35 Geo. III. c. 101. The latter, indeed, would not acquire a settlement for themselves, but settlements might be derived under them by apprentices and servants. And this is not like the case of a modern appointment of overseers to places that formerly had no such officers, because all such places must have been villis from time immemorial, and, consequently, under a legal obligation to maintain their poor, and possessing a legal right to the appointment of officers; and by such appointment to remove persons under the same circumstances as other townships or parishes might do. The consequence of this opinion is, that both the orders must be quashed."

Rex v. Cartmel, 4 Nev. & M. 357; 2 Ad. & Ell. 262. (a) Appeal against an order of justices removing Robert Armer from Burton to Cartmel. Order confirmed. Case:—The settlement relied upon by the respondents was by hiring and service at East Plain, in 1822. East Plain was *before* the act of parliament and award hereinafter mentioned part of a salt marsh formed by the gradual retiring of the sea, but occasionally overflowed by the tide, which salt marsh was part of the waste lands within the parish of Cartmel, and is bounded on the one side by the sea, and on the other by the ancient inclosed lands of the townships of Lower Holker and Lower Allithwaite, both within the said parish of Cartmel; but whether East Plain was within or formed part of any of the other five townships hereinafter mentioned in the said parish, no other evidence was given than its local situation as above set forth, and the act of parliament and award hereinafter mentioned. There are in the parish of Cartmel seven townships, viz. Upper and Lower Holker, Upper and Lower Allithwaite, Broughton, Staveley, and Cartmel. Each of them maintaining its own poor separately, and has a separate poor rate, and separate overseers. All the lands in the parish (except it be the said salt marsh, which East Plain is part of,) are comprised within one or other of these townships. There are no overseers of the poor for the parish at large, nor have any ever been appointed; neither is there or has there ever been any poor rate for the parish

1. *Place from and to which an Order of Removal may be made.*

The parish of C. was divided into seven townships, each maintaining its own poor, and there being no overseers or rate for the whole parish. A waste salt marsh within the parish, not belonging to any township, was awarded by the commissioners of an inclosure act to pay a quantum of rate to each of the townships, and a settlement having been gained in such waste, it was held, that the removal of the pauper to the parish of C. was bad, it not ap-

(a) But see *Rex v. Caermarthen*, 1 Nev. & M. 368; 4 B. & Adol. 563, *post*.

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pearing that there were any parties to whom the order could be directed.

at large, or any parochial funds out of which the poor can be maintained. The notice of appeal against the order of removal was signed by all the churchwardens and all the overseers of the poor of all the said townships respectively, wherein they described themselves as the churchwardens and overseers of the poor of the parish of Cartmel, and the appeal was entered as that of the churchwardens and overseers of the poor of the parish of Cartmel. The pauper was delivered to the overseer of the township of Lower Holker, with whom he still remained. By stat. 36 Geo. III. c. lxiv. (private), "For Improving, Dividing, and Inclosing the Commons, Waste Grounds, and Mosses, in the parish of Cartmel," (which act was made part of the case,) it was enacted, "that the commissioners appointed by the said act should draw up an award, which should specify and direct in what township or division within the said parish of Cartmel the several messuages, tenements, lands, mosses, and hereditaments, which should be exchanged, divided, or allotted by virtue of that act, should lie, or be parcel, and should be charged and pay all such taxes and assessments as should become due and payable in respect thereof." The commissioners in 1809 made their award, which, after allotting East Plain to certain persons, went on to order "that the said allotment or parcel of ground shall from time to time, and at all times hereafter, be subject to, and charged, and chargeable with the payment of such proportion of all rates, taxes, and assessments, parliamentary, parochial, or otherwise, out of the yearly value thereof, to the several townships or divisions within the said parish of Cartmel as are hereinafter mentioned, (that is to say,) to the township or division of Broughton after the rate of two-thirteenth parts or shares of the whole annual value thereof," &c. (the case then proceeded to state the proportions in which East Plain was directed by the award to contribute to the other townships respectively); "such several rates or assessments to be made in proportion as the said allotment bears in value with the estates of other proprietors in the said several townships or divisions." Since the making of the above-mentioned award the poor rates in respect of East Plain have been paid to the several townships within the parish of Cartmel, in the proportions named in the award. Thus, if there be a rate of 6d. in the pound on the annual value of lands in the township of Broughton, then East Plain pays to the overseer of the poor for the township of Broughton a rate of 6d. in the pound or two-thirteenth parts of the annual value, and so *mutatis mutandis* of the other townships. On these facts the appellants contended, that as East Plain was a part of a marsh which was derelict of the sea, and which marsh abutted on the townships of Lower Holker and Lower Allithwaite, East Plain was situate within one or other of those townships, and that the respondents ought to have ascertained within which of them it was situate, and to have removed accordingly; and that a removal to a parish which had no poor rate and no overseers was bad. But the sessions held, that as East Plain, where the pauper gained a settlement, was within the appellant parish of Cartmel, it was for the appellants to show, not merely that there was no poor rate made and no overseer ever appointed for the parish at large, but that East Plain was within some one or other of the seven townships, and they were of opinion that as far as appeared it might be within none of those townships, although it was within the parish of Cartmel. They therefore confirmed the order. Lord Denman, C. J. "It is impossible to say how the matter may turn out on further inquiry. The mere fact of the inclosure is not sufficient to guide us; but at all events we must see that no party is called on to do that which he is not bound to do." *Littledale and Williams, Js.* concurred. Order of sessions quashed.

If the place is a township, but described as a parish, and no appeal is had, it is conclusive.

Spitalfields v. Bromley, 18 Vin. Abr. 468; 2 Bott, 890. A pauper was sent to the parish of Stepney, who did not appeal. On removal of the order into the King's Bench, exception was taken, that the removal ought to have been to the township of Spitalfields; for Stepney is divided into four townships, and the poor have been removed from one township to another, in the same parish, and the statute takes notice of townships as well as parishes, and Spitalfields is a hamlet of Stepney. By the court: "If a person is removed to a wrong place, that place ought to appeal, and so Stepney ought to

have done if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the divisions of parishes into townships and villages which maintain their own poor severally and distinctly; and Stepney here, upon an appeal, might have shown that the person did belong to the township of Spitalfields, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole of the parish, (though so divided,) and have a superintendency over the whole villages and townships."

Rex v. Kirkby Stephen, Burr. S. C. 664; 2 Bott, 894. The parish of Kirkby Stephen consists of ten different townships, who maintain their respective poor, and have separate overseers. The township of Kirkby Stephen and the township of Wharton are two of them. The pauper, W. Greer, was removed from Newport, by an order directed to the officers of the *parish* of Kirkby Stephen, and adjudging his settlement to be in that *parish*, and removing him to that *parish*; and was delivered to the overseers of the *township* of Kirkby Stephen. But neither the *parish* of Kirkby Stephen, nor the *township* of Kirkby Stephen, appealed from the order; and the pauper remained in Kirkby Stephen, and was maintained by a sister, in the township of Kirkby Stephen, for near a year and a half; when his sister dying, he asked relief of the township of Kirkby Stephen, who thereupon got him removed by an order to the township of Wharton. Order quashed. By Lord Mansfield and the Court: "The original order made for the removal from Newport to the *parish* of Kirkby Stephen, must mean the *township* of Kirkby Stephen. The township was as a parish for the purpose of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of Kirkby Stephen ought in this case to have appealed. They could not get rid of this order but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices upon the whole truth being disclosed, the pauper might in the end of the inquiry have been sent to Wharton." Order of sessions confirmed.

Rex v. The Justices of Denbighshire, 1 B. & Ad. 616. D. Pollock had obtained a rule, calling upon the justices of Denbighshire to show cause why a *certiorari* should not issue, directed to them, to remove into this court all orders made by them between Thomas Owen, David Pritchard, and William Jenkins, inhabitants of part of the parish of Machynlleth, in the county of Montgomery, appellants, and the churchwardens and overseers of the poor of the parish of Llangerniew, in the county of Denbigh, respondents, touching the removal of certain paupers, and all proceedings relating thereto. The circumstances of the case were as follows:—By an order of removal, dated the 2d of September, 1829, the churchwardens and overseers of Llangerniew were directed to convey the paupers from that parish to the parish of Machynlleth, and to deliver them to the churchwardens and overseers of the poor there, or some or one of them, and the latter were required to receive the said paupers as inhabitants of their parish. Machynlleth was at that time divided into three districts, each maintaining its own poor. Two churchwardens were appointed for the whole parish, and one overseer for each district. The paupers were delivered to the overseer of one of these districts, namely, the township of Uwchygarreg, where their settlement was understood to be. The overseer of the township with the two parish churchwardens (describing themselves as churchwardens of the township) gave notice of appeal. The case came on at the next quarter sessions, and on proof of the service of the notice the appeal was dismissed on the grounds that there appeared to be only one overseer for the appellant district, and that the churchwardens described as of the township were in fact those of the parish. A fresh appeal was then entered at the same sessions on behalf of the above-mentioned T. Owen, D. Pritchard, and W. Jenkins, as inhabitants of a part of the parish of Machynlleth. These appellants were rated inhabitants of Uwchygarreg. Shortly afterwards two overseers were appointed

1. *Place from and to which an Order of Removal may be made.*

Churchwardens are overseers of a whole parish, though it be divided into townships.

So, although there is a parish and township of the same name, but the order was delivered to the officers of the township.

1. *Place from and to which an Order of Removal may be made.*

for the same township, and they, with the churchwardens of the parish, then gave the respondent parish two notices of their intention to prosecute the appeal at the next sessions; one notice describing it generally as an appeal against an order, &c. the other, as an appeal lodged at the last sessions by the three inhabitants above named. These last-mentioned parties also gave notice at the same time of prosecuting their appeal; and another notice was given by the attorney for the appellants, describing himself as attorney for the three above-named inhabitants, for the churchwardens and overseers of the township. The appeal was heard at the following sessions, and the order of removal was there quashed upon the merits, with costs, by an order of sessions, purporting to be made between T. Owen, D. Pritchard, and W. Jenkins, inhabitants of the parish of Machynlleth, appellants; and the parish of Llangerniew, respondents. Lord *Tenterden*, C. J. "I think the rule ought to be discharged. This is a parish consisting of three divisions respectively maintaining their own poor. The order to receive the paupers was directed to the churchwardens and overseers of the parish, but it seems the paupers were not taken to any regularly appointed officers of the parish, or of any district, or to the inhabitants; but to a single overseer, appointed for one township. An appeal was entered on behalf of the churchwardens and of the overseer for that township. The sessions held, that it could not be entertained, and dismissed it; but without going into the merits. A new appeal was entered at the same sessions in the names of some inhabitants of the parish, that course becoming necessary under the circumstances, and two overseers were afterwards appointed, who gave notice of prosecuting the appeal. Then at the following sessions the magistrates were of opinion that they ought to hear the appeal, they did so, and have decided on the merits; justice has been done, and I think we ought not to disturb their decision." The rest of the court concurred. Rule discharged; but without costs.

The parish of B. has no overseers of the poor, but contains several townships, separately maintaining their own poor, one of which is named B., and the other B. P. An order of removal was made to the parish of B., and the churchwarden of the parish of B. placed the pauper in the workhouse of the township of B. The pauper in fact belonged to the township of B. P.: Held, by *Denman*, C. J. and *Littledale*, J. (*Taunton* and *Patteson*, J. *dubitantibus*) that the township of B. had a right to appeal, and that the order of removal was bad.

Rex v. Bishop Wearmouth, 3 Nev. & M. 77; 5 B. & Ad. 942. Appeal against an order of removal from Botchergate to Bishop Wearmouth; and which was confirmed by sessions. Case:—The order of removal was made on the 28th of March, 1829, and the execution of it duly suspended; the suspension was taken off on the 12th of September, 1829, and a further order was then made by the magistrates on the churchwardens and overseers of the poor of the said parish of Bishop Wearmouth to pay the sum of 5*l.* 7*s.* 6*d.*, being the expense incurred by the suspension of the said order of removal, to William Kidd or Luke Kidd, upon demand, the said Luke Kidd being the overseer of the township of Botchergate, and father of the said William Kidd. The parish of Bishop Wearmouth consists of seven townships, each maintaining its own poor separately, and having separate and distinct overseers. Two of these townships are called Bishop Wearmouth and Bishop Wearmouth Panns respectively; and in the latter the pauper and his family were legally settled. There are no overseers of the poor of the parish of Bishop Wearmouth. When the order of removal was made, both the magistrates who signed the same, and the overseers of the removing township, knew of the division of the parish of Bishop Wearmouth into townships, each maintaining its own poor, and that the pauper's settlement was in the township of Bishop Wearmouth Panns, though in the order of removal it was declared and adjudged by them to be in the parish of Bishop Wearmouth. The suspended order was not served till after the suspension was taken off; namely, on the 28th of September, 1829. The pauper and his children were taken by W. Kidd from the removing township to the township of Bishop Wearmouth Panns, with directions from the overseer of Botchergate to serve the order on and deliver the paupers to the overseer of the township of Bishop Wearmouth Panns, and to demand from him 5*l.* 7*s.* 6*d.* W. Kidd accordingly, on the 28th of September, took the paupers to that township, and saw the overseer there, to whom he delivered the order, and demanded from him the above sum. The overseer of Bishop Wearmouth Panns stated that he believed the settlement of the paupers was in his township; but as the order of removal was not directed to the overseers of that township, but to the churchwardens and overseers of the poor of the parish of Bishop Wearmouth, he objected to it on ac-

count of its informality. Ultimately, however, he agreed, in order to save further expense and trouble, as he had no doubt of the paupers belonging to that township, that he would waive the objections he had taken to the order, if the overseer of the removing township would consent not to call for the 5*l.* 7*s.* 6*d.* This proposal, however, not being acceded to, W. Kidd (to save expense) took the paupers to the workhouse of a neighbouring and distinct parish, leaving them as boarders; and returned home, taking with him the order of removal. The paupers remained there till the 22d of October following, when Luke Kidd, the overseer of the removing township, having paid for their board, took them with the same order to the same overseer of Bishop Wearmouth Panns as before, and again attempted to prevail upon him to accept the paupers and pay the money. This, however, he refused to do, for the same reasons he had before assigned, acknowledging at the same time that the paupers belonged to his township; whereupon Luke Kidd took the order to Mr. W. Hills, one of the churchwardens of the whole parish of Bishop Wearmouth, and who resided in the township of Bishop Wearmouth, and informed him of the refusal by the overseer of Bishop Wearmouth Panns to receive the paupers. Mr. Hills accompanied L. Kidd to try to prevail on the overseer of Bishop Wearmouth Panns to take the paupers. They found him at his place of business, situate in a distant parish (Sunderland), but he still refusing to receive the paupers, L. Kidd, the overseer of the removing township, served Mr. Hills, the churchwarden of the whole parish of Bishop Wearmouth, with the removal order, Hills being then in the parish of Sunderland; and the paupers were lodged by him in the workhouse of Bishop Wearmouth township, and maintained by that township till the appeal was heard. It was objected by the counsel for the respondents, that the churchwardens and overseers of the township of Bishop Wearmouth had no right of appeal, and were not entitled to be heard; but the court of quarter sessions determined that they were parties aggrieved, and entitled to appeal. The questions for the opinion of this court were, 1st, whether the township of Bishop Wearmouth was, under the circumstances, entitled to appeal; secondly, whether the order of removal, so directed and served as aforesaid, was, notwithstanding the objection made to it at the time of such service, a good, valid, and binding order or not. *Denman, C. J.* "Great pains have been taken to perplex this case by the magistrates and the officers of the removing township. No doubt it was the duty of the magistrates when they ascertained that the parish was divided into townships, and the settlement of the paupers was in one of those townships, to remove the paupers to the township bound to maintain them. If they had done so here there would be no dispute. But the order is to remove to the parish of Bishop Wearmouth generally, which, for the purpose of maintaining the poor, has no existence. Then the officer of the removing township sees the officer of the township to which the removal ought to have been made, and the latter objects to receive the pauper, because the order is to remove to the parish, unless the former will waive some costs; he refuses to do so. The paupers are then taken to the churchwarden of the whole parish of Bishop Wearmouth. He was not overseer of the township of Bishop Wearmouth, and as far as that township is concerned in the appeal, must be considered an entire stranger. He took the paupers with the order to another township which happens to be of the same name with the parish to which the removal was directed to be made. That township therefore had the paupers under an order directed to a parish of the same name: it was not bound to receive them, and was a volunteer to a certain extent; and the question is, whether it comes within the stat. 13 & 14 Car. II. c. 2, s. 2, which gives the right of appeal to all persons who think themselves aggrieved by any judgment of the justices. That clause, as it seems to me, ought not to be construed so as to let in any one who, taking a capricious view of the order, may think himself aggrieved by it, when it is clear that he was not intended to be included in it, but must be confined to those who may have reasonable ground for thinking themselves aggrieved. I think, however, that there was in this case reasonable ground for the inhabitants of Bishop Wearmouth to think they might suffer by this order,

1. *Place from and to which an Order of Removal may be made.*

1. *Place from
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whereby the paupers were directed to be removed to a parish of the same name as the township, and that therefore they had a right to appeal. They might have a reasonable apprehension that they would be fixed with the pauper if they did not appeal, and, consequently, might think themselves aggrieved by the order. The appeal was heard, and the order of removal was confirmed on proof of a settlement in the township of Bishop Wearmouth Panns, the inhabitants of which, for the purpose of this appeal, must be considered as third persons. The sessions have clearly done wrong in this respect, and the order must be quashed." *Littledale, J.* "The order of sessions must evidently be quashed, because it confirms an order of removal to the parish of Bishop Wearmouth, and it appears clearly that the settlement of the pauper was in a township within the parish. It seems to me that the township of Bishop Wearmouth had a right to appeal. They had just reasons to apprehend that they would be fixed if they did not appeal. They therefore come within the words of the stat. 13 & 14 Car. II. c. 12, s. 2. They had very good reason to think they might be injured by the order; for though the justices thereby directed the paupers to be removed to the parish of Bishop Wearmouth, the officers of the township of that name might suppose that the paupers must be maintained by some one of the townships within that parish, and that their township being of the same name as the parish, was the one intended by the justices. The order was not binding on Bishop Wearmouth Panns, because not directed to that township." *Taunton, J.* "The order of sessions is wrong, because the paupers were settled in Bishop Wearmouth Panns, and it was intended to remove them thither; but the sessions have confirmed an order removing them to the parish of Bishop Wearmouth, which does not maintain its own poor. This is not a mere verbal mistake, as in *Rex v. Kirkby Stephen* (*Burr. S. C.* 664, *ante*, 849), for the names of the parish and township are not the same, and the thing done was not according to the intention. But I have great doubt whether the inhabitants of the township of Bishop Wearmouth had reasonable cause to think themselves aggrieved. The statute does not give the right of appeal to every person, who, upon any inconsiderate view of his case, may think himself aggrieved, but only to persons who have reason to think themselves aggrieved. I am not satisfied that the appellant township would have been concluded by this order if they had not appealed against it. It never had been served on the officers of that township, nor was it served by the officers of the removing township. My doubt, however, is not so serious as to make me differ from the rest of the court." *Patteson, J.* "For the reasons already given, the sessions ought clearly to have quashed the order of removal. It is to be regretted that the magistrates should have ordered the paupers to be removed to a place where they were clearly not settled. *Spitalfields v. Bromley* (18 *Vin. Ab.* 468, tit. Removal, (H.) pl. 5, *ante*, 848), goes to this extent, that magistrates are not bound to notice the division of parishes into townships; and, therefore, if they do not know that a parish is so divided, and make an order directing a pauper to be removed to the parish, such an order may not be wrong. But if they are informed before they make the order that a parish is divided into townships maintaining their own poor separately, and that the settlement of the paupers is in one of those townships, it is their duty to direct the paupers to be removed to the township bound to maintain them. It seems to me also that the service of the order on the township of Bishop Wearmouth was not good. The order was directed to the churchwarden and overseers of the poor of the parish of Bishop Wearmouth, but there were no overseers of the poor of that parish. It was not served on the overseers of the township of Bishop Wearmouth, but of Bishop Wearmouth Panns. I doubt, therefore, whether the inhabitants of the township of Bishop Wearmouth had any right to appeal, because, not being bound to receive the paupers, they were, to a certain extent, volunteers. At the same time as the order was served on the churchwarden of the parish, who was in some respect the representative of all the townships within it, and he in fact placed the paupers in the workhouse of the township, the officers of the latter may be considered as having received and maintained the paupers under the

order, and may have thought it obligatory on them so to do, and, consequently, that the township might be aggrieved by it. I therefore yield on this point (though not without much doubt) to the opinion of my lord and my brother *Littledale*." Order of sessions quashed.

Rex v. Bingley, 2 Nev. & M. 103; 4 B. & Ad. 567. Appeal against an order of two justices removing Isabella Rushworth, widow, and her children, from Heslington, St. Lawrence, to Bingley. Order confirmed. Case:—The paupers were removed from Heslington, St. Lawrence, to the township of Bingley, under the above order. The parish of Bingley consists of several townships, of which the township of Bingley is one. The parish maintains its own poor collectively; and there are no separate overseers for the township of Bingley. The question was, whether the order of removal to the township of Bingley could be supported. *Cur. adv. vult.* Denman, C. J. now said (after referring to *Rex v. The Justices of Carmarthen* (1 Nev. & M. 368; 4 Bar. & Ad. 563), as in some degree analogous,) that the present order was informal, but might have been amended at the sessions; and that being so, the court thought that the case should go back to the sessions, that the amendment might be made."

1. Place from and to which an Order of Removal may be made.

Paupers were removed to the township of Bingley, the township does not maintain its own poor, but is in the parish of Bingley, which does: Held, that the order was informal, but the sessions might amend it.

Rex v. Swalcliffe, Cald. 248; 2 Bott, 786. An order of removal to Ascott, a large populous village, part of the parish of Whitchford, but maintaining its poor in common with Whitchford, is a mere nullity, and not conclusive, although unappealed from.

Removal to a village, a part of a parish, is void.

Rex v. Topsham, 7 East, 466. This was an order of removal from Topsham to "the parish of Poole, or town and county of Poole," and addressed to the churchwardens and overseers of "the parish of Poole, or town and county of Poole." There was in fact no such parish as the parish of Poole, but the town and county of Poole consisted but of one parish, and the name of that parish was St. James's in Poole. It was held, that it was no objection to the description of *parish of* the Poole, omitting the mention of its tutelary saint, there being but one parish in the town and county of Poole, and Poole being the common name of the place. And that the parish officers of Poole had themselves considered this description sufficient to call upon them to appeal to the sessions against the order, by whom the objection to the misnomer had been overruled.

Removal to the parish of Poole, being the common name, is sufficient.

2. ON THE COMPLAINT OF WHOM.

By the 13 & 14 Car. II. c. 12, s. 1 (*ante*, 820), the justices are empowered to make an order of removal, "upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

2. On the complaint of whom.

The necessity of proceeding according to this provision of the statute has been long established.

Rex v. Hareby, Andr. 361; 2 Bott, 811. An order of removal did not set forth any complaint made. The court: "The complaint is the foundation of the jurisdiction of the justices; and therefore the order must be quashed."

Order of removal must set forth the complaint of the parish officers.

Western Rivers v. St. Peter's, 2 Salk. 492; 3 Salk. 254; 2 Bott, 803. Exception to an order of removal, in that it was said to be upon complaint only and not of the churchwardens or overseers. By the court: "This exception is fatal; for no one can disturb a man coming into a parish but they that have authority to do it. A complaint from one not concerned is nothing; it may be the parish is willing to keep him."

Spalding v. St. John Baptist, Fol. 267; 2 Bott, 639, &c. The order was, "To the churchwardens of Spalding, and to the churchwardens, &c. of St.

Complaint must be by the church-

2. *On the Complaint of whom.*

wardens or overseers.

3. *To what Justices.*

The removing justice must not be one of the complaining churchwardens.

John Baptist: whereas complaint hath been made by you ——" It was moved to quash the same for the uncertainty, because it did not say by which. But by *Parker, C. J.* "Sure that is well enough; for it is upon complaint of the right, if both complain."

3. TO WHAT JUSTICES.

Rex v. Great Yarmouth, 6 B. & C. 646; 9 D. & R. 682. Order of removal of R. Lenny from Woodbridge to Great Yarmouth, made on the complaint of the churchwardens and overseers of Woodbridge. G. Thomas, one of the magistrates who signed the order, was one of the churchwardens of Woodbridge. *Bayley, J.* "I think there was no objection to this order of removal, on the ground of interest in the magistrate. The statute 16 Geo. II. c. 18, authorizes justices to act (in the case therein mentioned), notwithstanding they may be interested by reason of their being rateable. It is impossible to say that a churchwarden or overseer has any other interest in the removal of a pauper, except in his character of a rated inhabitant. He may, indeed, in the character of churchwarden, become liable to costs; but that responsibility can only attach to him, in consequence of his improperly removing the pauper. It is, therefore, against his interest to make any order of removal as far as costs are concerned; for, by so doing, he subjects himself to a responsibility which would not otherwise attach to him. But, I think that it is a fatal objection to this order, that the person who was the complainant heard and adjudicated upon the complaint. I cannot consider him as divested of the character of churchwarden at the time when the order was made. It purports to be made on the complaint of the churchwardens and overseers; and the statute 43 Elizabeth, c. 2, commits the management of the poor to the churchwardens and overseers. From the nature of the thing, the complaint must have been made by the churchwardens and overseers. Then, if the churchwardens made the complaint, the person who was one of the complainants heard and adjudicated upon it. Upon that ground, I think the order of removal was bad, and that the order of sessions confirming it ought to be quashed." *Holroyd, J.* "I also am of opinion that the order of removal is invalid, on the ground that the same person cannot, in point of law, be the complainant and the person hearing the complaint. The statute 16 Geo. II. c. 18, enacts, that magistrates, who, by reason of being rateable to the relief of the poor in any parish, are virtual parties to the complaint of chargeability upon which an order of removal is founded, shall be competent to act in the making of such order. In this case, the parish officers are not only virtual but acting parties to the complaint. Now, it is quite inconsistent that the same person should be a party to and a judge in a suit. The two characters are incompatible with each other. In this case, therefore, as one of the parties who made the order was churchwarden of the removing parish, and appears to have adjudicated upon a complaint to which he was a party, I think the order of removal was bad." *Littledale, J.* "I am of the same opinion. The statute 16 Geo. II. c. 18, which enabled justices having an interest in the removal of a pauper, by reason of their being rateable in the parish, contemplated those cases only, where there was one set of persons to complain and another to adjudicate, viz. churchwardens and overseers, as persons distinct from the justices to whom the complaint is made." Order of sessions quashed.

The justices may act, though rated inhabitants, (see preceding case); but not when churchwarden or overseer.

The justices' authority must appear.

It must appear upon the face of the order, that the parties making it are justices of the peace; thus, in *Walton v. Chesterfield* (5 Mod. 322; 2 Bott, 775), an order was quashed, because it was only "whereas complaint hath been made unto us," without reciting their authority as justices.

Complaint may be to one justice, but the order of removal must be by two.

Rex v. Westwood, Sett. & Rem. 107; 1 Stra. 73; 2 Bott, 782. On complaint to one justice, two justices adjudge and remove; and it was held to be well. Otherwise, where one justice sets his hand to the order in the absence of the other.

Ware v. Stanstead Mount Filchet, 2 Salk. 488. Exception to an order, for that it was said, it appears upon examination *before us or one of us*. By the court: "The examination ought to be before both, because both are to make the judgment of removal." And Gould, J. said, "The statute directed, and the practice was, to make *complaint* to one justice, and he grants his warrant to bring the pauper before two justices, and then they two examine and remove." (See 49 Geo. III. c. 124, s. 4, *ante*, 825.)

Rex v. Wykes, Andr. 238; 2 Bott, 818. One justice took the examination, and other two justices removed upon that sole examination, and in the order set forth that the party was examined *before themselves*; for which, and for not summoning the party before them, an information was granted against the two justices.

But such an order signed by two justices is not void, and can be only set aside on appeal. (See *Rex v. Cottingham*, 4 Nev. & M. 215; 2 Ad. & El. 250, *post*; and *Rex v. Stotfold*, *post*, 858.)

Rex v. Hamstall Ridware, 2 Bott, 503, *ante*, 519. Whether it be necessary that two justices shall be together at the time, depends upon the circumstance whether the act to be done be judicial or merely ministerial.

Rex v. Coln St. Aldwin's, Burr. S. C. 136; 2 Bott, 673. The order of removal was made by two justices of Wiltshire, on an examination of the mother of the child removed taken before two justices of Middlesex, which had been transmitted to the justices of Wiltshire with an affidavit verifying that it was duly taken. In the order the justices of Wiltshire for themselves adjudged, "that it appears to them upon due examination and inquiry upon oath into the premises." Lee, C. J. "It is plain that these Wiltshire justices have grounded their adjudication upon the examination transmitted to them from the Middlesex justices. What they examined and inquired into upon oath, was the conveyance of the child out of one parish into the other. Now the examination on which they relied being taken by two justices of another county, and the person examined by those justices remaining still alive, for aught that appears to the contrary, it is plain this deposition ought not to have been received as evidence to ground their adjudication upon; though it might, perhaps, have been used as concurring evidence. I have often heard it declared here, and by Eyre, J. particularly, that both justices ought to be present at the *vivâ voce* examination of the witnesses." Page, J. "I remember a case where it was determined that both justices must be present; and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself. If the woman was alive, she ought to have been examined by these justices themselves. But even supposing that she was not alive, yet still I do not know that they could regard that Middlesex examination. It does not appear that the Middlesex justices had any jurisdiction, for no complaint appears to have been made before them; and if not, they could have no jurisdiction. The justices having set forth, though they were not bound to do it, the grounds of their adjudication, the court will judge of the sufficiency of them." Chapple, J. said, "That the justices founded this, their adjudication of the place of settlement, wholly upon the transmitted examination, which they ought not to have admitted at all."

Reg. v. Uplin, Sett. & Rem. 27. The order was quashed, because it did not say that they were justices of the peace but only justices of the county.

Rex v. Owlton, 2 Sess. Ca. 76; 2 Salk. 474. Exception was taken to an order for saying "unto us, two of his Majesty's justices of the peace in the county aforesaid;" for that by this it appears only that they lived in the county, and not that they were justices *for* that county: and the court held this to be a fatal exception, and quashed the order.

Rex v. Andover, Cald. 373; 2 Bott, 801. Exception was taken to an order, that the magistrates stated themselves to be "two of his Majesty's justices of the peace for the borough or town and parish of Andover," &c. Order quashed *for irregularity upon the face of it*. It was contended that the order was uncertain; they may be justices for the town and not for the borough, or for the borough and not for the town; but certainly not for both,

3. To what Justices.

One justice may order a pauper to be brought up; but two must be present at the examination.

Examination must be by the justices who remove.

The justices of one county cannot make an order of removal on an examination taken by the justices of another county.

Both justices ought to be present at the examination.

To be justices of the peace.

And to be *for* the county, &c.; in the county not sufficient.

Justices of the borough or town and parish sufficient.

3. *To what Justices.*

It need not appear that they are justices of the division.

An order of magistrates was directed to the parish of W. in the county of Rutland, and also to the parish of M. in the county of Leicester, and the words "county of Rutland," were then written in the margin, and the magistrates were in a subsequent part of the order described as justices of the peace for the county aforesaid: Held, that it thereby sufficiently appeared that they were justices for the county of Rutland. (a)

nor does it appear for which. *Buller, J.* "Whether for one or the other enough appears to support the order; for both town and borough are coupled with parish. And they sufficiently appear to be justices of either of those places for which they were empowered to make this order." *Lord Mansfield, C. J.* and *Willes, J.* concurring, (*Ashhurst, J.* absent,) order of sessions quashed.

Anon., 2 *Salk.* 473; 2 *Bott*, 795. It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute. But this objection was over-ruled, for that the statute therein is only directory.

Rex v. St. Mary's, Leicester, 1 *B. & A.* 327. Removal from Wing in the county of Rutland to St. Mary's in the borough of Leicester. Order confirmed. Both orders being removed by *certiorari*, a rule was obtained calling on the parish officers of Wing to show cause why they should not be quashed for a default of jurisdiction in the magistrates making the original order, apparent on the face of it, in not stating them to be justices of the peace of the county of Rutland. The order was: "County of Rutland. To the churchwardens and overseers of Wing in the said county, and to the churchwardens and overseers of St. Mary's in the borough of Leicester in the county of Leicester. Rutland to wit. Upon the complaint of the churchwardens and overseers of Wing in the said county, made unto us whose names are hereunto set and seals affixed, being two of his Majesty's justices of the peace in and for the said county, and one of us of the quorum, that Mary Bacon, &c. are come to inhabit, &c. (*pursuing the usual form of such orders*)."
Lord Ellenborough, C. J. "If this court is put under the painful necessity of over-ruling *Rex v. Moor Critchell* (*infra, note*), in order to do justice in this case, I have no hesitation in so doing. The words 'justices of the peace in and for the said county,' in that case immediately follow the words 'the county of Wilts aforesaid,' and in plain grammatical construction can have reference to the county of Wilts only. For the word *said* must have reference to the last antecedent, and I wish that the very able and learned judge who decided that case, instead of lamenting that such an objection had there been taken, had applied his powerful mind to the objection itself, and I have no doubt that it would have vanished before that mind exerting its proper vigour on the subject. Here there is first, 'County of Rutland,' in the margin, then come the words 'parish of Wing in the said county;' that must mean the county of Rutland, if we are to give the word *said* any meaning at all. Then immediately follow the words 'justices of the peace for the said county;' that must, therefore, also have a reference to the county of Rutland. The grammatical construction and plain meaning of the instrument direct us to that conclusion alone."
Bayley, J. "It is impossible to doubt in this case to what county the magistrates who made this order belonged. *Rex v. Moor Critchell* is undoubtedly a very strong authority, and perhaps not distinguishable from this case; but that case does not convince me. I think the court ought there to have come to a contrary conclusion. In that case the words 'said county' could only mean, in grammatical construction and common sense, the county of Wilts. Now here, 'said county' must mean Rutland and not Leicester. Besides, in this case, after the direction of the order, there are found in the margin the words 'county of Rutland, to wit,' which make the case much stronger. Then, if there be no

(a) *Rex v. Moor Critchell*, 2 *East*, 66. The order was, "Wilts, to wit. To the churchwardens, &c. of Donhead, St. Mary, in the county of Wilts, aforesaid, to remove; and to the churchwardens, &c. of Moor Critchell, in the county of Dorset, to receive, these:—Whereas, complaint hath been made by you, the churchwardens, &c. of Donhead, St. Mary, in the county of Wilts, aforesaid,

unto us, whose hands and seals are hereunto subscribed and set, being two of his Majesty's justices of the peace in and for the said county, &c." it was contended that the order was bad for a default of jurisdiction in the magistrates making the order, apparent upon the face of it, in not stating them to be justices of the peace of the county of Wilts. *Lord Kenyon* held the objection to be fatal.

doubt to which county the word *said* refers, the objection cannot prevail." *Abbott, J.* "The *Rex v. Moor Critchell* was a decision, not establishing any general rule of law, but turning upon the construction of the terms of that particular instrument, and has not, I believe, been since recognised or acted upon. Even if this case were precisely similar to that, I should say that the court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language. Here, however, there is a distinction; the county here is named, for the second time, in the margin, and we may therefore begin to read the instrument from that part; if so, there will be no doubt; for the county of Rutland is the only county named to which the word *said* can have any reference." *Holroyd, J.* concurred. Order affirmed.

In *Rex v. Childerscotten* (8 T. R. 178, *post*), the order was similar, except that there was no county named in the margin; the order was held to be void, though unappealed against. (See *Rex v. Courtisthorpe*, 2 B. & Ad. 487.)

Orders formerly have been quashed for not setting forth that one of the justices was of the *quorum*; but now, by 26 Geo. II. c. 27, no order shall be set aside for that defect only. But if neither of the justices be, in fact, of the *quorum*, it seems (except in the cases hereafter mentioned, by 7 Geo. III. c. 21; 4 Geo. IV. c. 27,) that such order will not be good; for the statute requires that one of them shall actually be of the *quorum*, though it dispenses with the necessity of setting that forth in the order. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace. That is to say, they have the power which the justices of the county at large have, by the first assignment in the commission of the peace. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was superadded to the former some years after the institution of the office of the justices of the peace. (See tit. "*Justices*," Vol. III.)

And by 7 Geo. III. c. 21, if in any city, borough, town corporate, franchise, or liberty, they have *one* (and no more than one) justice actually of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments done or executed by two or more justices, qualified to act within such city or other place, shall be valid, although neither of the justices shall be of the *quorum*.

And further, by 4 Geo. IV. c. 27, reciting the last mentioned statute, "And whereas it is expedient that the provisions of the said act should be extended to such cities and other jurisdictions as have two or any other limited number of justices of the *quorum* qualified to act within the same:" be it therefore enacted, That from and after the passing of this act, in all cases where the number of justices of the peace for any city, borough, town corporate, franchise, liberty or other local jurisdiction, is limited, and any one, two or more of such justices only are of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, which shall be made, done or executed, either in or out of the general quarter sessions or petty sessions, or any adjournment thereof, by virtue of any charter or grant, or by virtue of any act of parliament made or to be made, by any two or more justices of the peace acting within the same, though neither of the said justices be of the *quorum*, shall be valid in law, to all intents and purposes, as if the said justices had been of the *quorum*; any grant, charter, law or custom to the contrary thereof in anywise notwithstanding."

Albrighton v. Skipton, 1 Stra. 300; 2 Bott, 797. Upon an appeal from an order of removal made by two justices, one of the *quorum*: the sessions, reciting that they had perused the charter of Albrighton, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order. But by the court: "The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alleged; since they might have a juris-

3. To what Justices.

One of the justices must be of the *quorum*, though the fact need not appear on the order.

Cities, &c. having two or more justices of the *quorum*.

The sessions may examine into the jurisdiction of the removing justices.

3. *To what Justices.*

diction, though it did not appear upon the charter of Albrighton. The sessions should have said in general, that it appeared to them that the two justices were neither of them of the quorum, and that would have been good cause to quash the order of the two justices."

4. *Of the Examination.*

4. OF THE EXAMINATION.

Before the order of removal is issued, an examination must be made, and this examination should be made and drawn up with great care, as in the event of an appeal against the order, the removing parish cannot give evidence of any ground of removal, except those stated in the examination. See sect. 8 of 4 & 5 Will. IV. c. 76, Appendix. (a)

One justice may issue his warrant to summon the pauper to be examined concerning his settlement. (See form, *post*, Appendix.) Witnesses may also be summoned for the like purpose. (See also form, *post*, Appendix.) And it is very advisable that the overseers and churchwardens of the parish, to which it is proposed to remove the pauper, be summoned to attend the examination. (See form of summons, *post*, Appendix.)

Due examination or consideration sufficient.

Munger-Hunger v. Warden, 2 Sess. Ca. 40; 2 Bott, 817. Exception was taken to an order, for that it was said to be made upon *due examination*, without saying *upon oath*. But by the court: "This is sufficient; for if it is said to be made upon due examination, it shall be understood to be upon oath, though the statute directs the examination to be upon oath."

Rex v. Fisherton Delamore, Sess. Ca. 45. "Upon *due consideration*" was held sufficient, for that implies *due examination*.

Examination taken and order signed by two justices separately, is not void but only voidable on appeal.

Rex v. Stotfold, 4 T. R. 596. M. Shaw and family were removed from Stotfold to Chilvers. Order quashed. Case:—The pauper was born at Stotfold, but his father's settlement was at Chilvers Coton, and the pauper had never gained any settlement in his own right, except as follows: He and his family were in 1776 removed from Sandon to Stotfold in the usual form, and were delivered to the parish officers of Stotfold, who received them, and did not appeal. The pauper and his family have ever since, till the present removal, occasionally resided in and been relieved by Stotfold. It was then proved by the respondents (but which evidence was objected to by the appellants, but over-ruled by the court), that the order of removal from Sandon to Stotfold, and the examination on which it was founded, were in fact taken and signed by the two justices *separately, and not in the presence of each other*, and that one of them, though a magistrate for the county of Hertford, took the examination and signed the order at his own house, situate in that part of Royston, which lies in Cambridgeshire, Royston lying partly in each county. Lord Kenyon, C. J. said, "That he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question; and that the result of his deliberations and of the rest of the court was, that the former order was only *voidable*, not absolutely *void*; and therefore that it was necessary for the parish who wished to avoid it to have appealed against it in a regular course of proceedings; that it would be extremely inconvenient to permit a parish to set aside an order of removal at any distance of time, which had been acquiesced under for years without any dispute; and that a distinction had always prevailed between void and voidable instruments; a strong instance of which was, that on the construction of the statute Westminster 2, c. 1, which, though it enacts that all fines contrary to that act shall be *ipso jure* null, has been held to mean only voidable by some legal proceeding." Order of sessions confirmed. (See also *Rex v. Wykes*, Andr. 238, *post*, 862.)

If two justices take the examination of a pauper relative to his settlement, but do not remove him, and the

Rex v. Eriswell, 3 T. R. 707. Order of removal of John Sharp from Icklingham, All Saints, to Eriswell, confirmed. Case:—Examination of the pauper in 1779 was taken before two justices, upon the overseers of Icklingham taking him to be examined as to his settlement; his examination was

(a) See also Appendix of Forms, where forms of examinations are given.

taken upon oath before those justices, and signed by the pauper; by which examination it appeared that he had gained a settlement by hiring and service for a year in Eriswell, and had done no act to gain a settlement elsewhere. No proceedings were had in consequence of this examination until this order of removal was applied for and made. [N. B. The two justices who made the order of removal were *not the same* two justices who took the examination.] The pauper, from the time of the examination being taken, continued to reside at Icklingham for about five years, without being chargeable to that parish, when he became insane, and so continues. His examination was offered in evidence, and objected to, but received. The evidence, exclusive of the said examination, was not sufficient to warrant the determination. The judges gave their opinions at great length. *Ashhurst* and *Buller*, Js. were for confirming, and *Lord Kenyon*, C. J. and *Grose*, J. were for quashing the orders; but there not being a majority of the court of opinion that the rule for reversing the orders should be made absolute, they consequently stood confirmed.

Where a pauper is too infirm to be brought before the justices at their petty sessions, a justice is authorized by the 49 Geo. III. c. 124, s. 4, to take the examination, and report to another justice. (See the section, *ante*, 825.)

Rex v. South Lynn, All Saints, 4 M. & Sel. 354. Removal of E. Smith, widow, and her children, from St. Margaret's to South Lynn, All Saints. Order confirmed. Case:—The order was founded upon the examination of the pauper, taken before one justice, and reported to the other, pursuant to 49 Geo. III. c. 124, s. 4. The pauper, being at the time of her examination sick and unable to travel, the justices suspended the order. The question was, whether this order was void, as it omitted to set out that the examination was taken before one justice only, and was reported to the other justice, so as to show the particular jurisdiction and authority of the justices under the statute? *Lord Ellenborough*, C. J. "The justices have no jurisdiction at the common law, but only what is given to them by statute; and the argument is as if this were a proceeding contrary to the common law. It seems to me that the statute in question does not make it necessary for the justices to state the proceedings had under it in their order." *Le Blanc*, J. "The statute enacts, that in case the pauper is by age or other infirmity unable to be brought up to be examined as to his settlement, it shall be lawful for one magistrate to take his examination and report it to another, and for those magistrates, upon such report, to adjudge the settlement; but I do not find that the statute makes any alteration in the form of the order." *Per curiam*: order confirmed.

In *Rex v. Nuneham Courtney*, 1 East, 373, the order was confirmed by the sessions, and it was stated that the pauper had absconded between the notice of appeal and the then next sessions, and could not be heard of; that the respondent parish of Burcot offered in evidence an examination in writing of the pauper, which examination was first taken upon the oath of the pauper on the 4th of June, 1799, by one magistrate, upon the complaint of the churchwardens and overseers of the poor of Burcot, and to the truth of the contents of which examination the pauper then made oath before the justices, who thereupon made the order on that same day. But no person was present belonging to Nuneham Courtney; whereupon the appellants objected to the admissibility of this evidence; but the court over-ruled the objection. But the Court of King's Bench, without hearing counsel, expressed a decided opinion against the admissibility of such evidence, and quashed both orders.

Rex v. Ferry Frystone, otherwise *Ferry Bridge*, 2 East, 54. Order confirmed. Case:—The pauper, Catherine Hill, deposed, "That she was the widow of John Hill, and that she had heard John in his life-time say that his settlement was at Ferry Bridge, which he said he gained by hiring with and serving one J. Hawkeshead, a bricklayer, in Ferry Bridge, for a year." The following examination was also given in evidence. The examination of John Hill, late in the royal artillery, now residing at Kilnwick, taken upon

4. Of the Examination.

pauper afterwards dies or becomes insane, *Quære*, whether two other justices may remove his family on it? (See *Rex v. Warminster*, 3 B. & Ald. 121, post, 861.)

Such an order of removal need not state the special circumstances of taking the examination.

An examination of a pauper for the purpose of removal, is not evidence upon an appeal against that order of removal, though the pauper cannot be found.

Neither the hearsay of a pauper who is dead, nor his ex parte examination in writing, taken on oath before two magistrates, touching his set-

4. *Of the Examination.*

tlement, are admissible evidence of such settlement.

Settlements for soldiers' wives and children, when quartered in England.

No other copy but the attested one is evidence.

The original examination is evidence.

oath this 15th day of April, 1788, who saith, "That his legal settlement is at Ferry Bridge; that he acquired the same by servitude; namely, by being hired for one whole year, and serving the said year with J. H., bricklayer, of Ferry Bridge; and that he hath not gained any legal settlement elsewhere since, to the best of his knowledge and belief." (Signed and attested.) No proceedings were had in consequence of this examination until the order was made. Ferry Frystone and Ferry Bridge were the same township. Lord *Kenyon*, C. J. "The point upon which the court were divided in opinion in *Rex v. Eriswell* (*ante*, 858,) has been since considered to be so clear against the admissibility of the evidence, either as to the hearsay of the pauper or his examination in writing, that it was abandoned by the counsel at the bar in *Rex v. Nuneham Courtney* (*ante*, 859,) without argument. It is true there was no evidence there that the pauper, whose examination had been admitted in evidence, was dead; but our opinion against the general doctrine laid down by the two judges who supported the reception of the evidence in the former case was pretty broadly hinted; and to be sure, that point may now be considered to be at rest. *Per curiam*: both orders quashed.

Rex v. Abergwilly, 2 *East*, 63. It was also settled that an *ex parte* examination in writing of a pauper, touching his settlement, cannot be received in evidence of such settlement, though he be dead.

Stat. 5 Will. IV. c. 5, s. 70 (a), (the mutiny act), enacts, "That any justice in the United Kingdom, within whose jurisdiction any soldier in the regular army or the permanent staff of the militia, having a wife or child, shall be billeted, may summon such soldier before him in the place where he is billeted, which summons he is hereby directed to obey, and to take his examination in writing upon oath, touching the place of his last legal settlement in England, and such justice shall give an attested copy of such examination to the person examined, to be by him delivered to his commanding officer, to be produced when required; which said examination, and such attested copy, shall be at any time admitted in evidence as to such last legal settlement, before any justice, or at any general or quarter sessions, although such soldier be dead or absent from the kingdom: provided that in case any soldier shall be again summoned to make oath as aforesaid, then on such examination, or such attested copy thereof, being produced by him or by any other person on his behalf, such soldier shall not be obliged to take any other oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required.

Rex v. Clayton Le Moors, 5 *T. R.* 704. The examination of the pauper, taken under the mutiny act, was the evidence relied on. The witness stated that the paper produced was a true copy examined by himself with another paper, which witness saw in the office of W. Addington, London. W. A. was the name of the justice who signed the original. He saw W. A. subscribe his name to the paper produced. He did not know the pauper, nor was he present at the original examination. The sessions refused to receive it. Lord *Kenyon*. "It is not necessary to say here whether or not the original is evidence; it is sufficient for the determination of this case to say that the copy of the examination tendered in evidence is not the copy which the act directs to be received in evidence." Order of sessions confirmed.

Rex v. Warley, 6 *T. R.* 534. It was determined that the original examination is evidence; and Lord *Kenyon* added, "That on this question it was impossible to doubt; the proposition attempted in this case is, that the attested copy is of more weight than the original examination; but it is fair to conclude that the legislature, when they made the inferior species of writing evidence, also intended to make the superior evidence."

(a) The terms of the annual Mutiny Act seldom vary. The words "although such soldier be dead or absent from the kingdom," were not contained in the similar statute of 1 Geo. IV. c. 19; and in the last mentioned statute the words were "any non-commissioned officer or soldier."

Rex v. Bilton with Harrowgate, 1 East, 13. An examination under the act was produced. The witness stated that he received it from the overseer of the respondent parish, but he was not called. No proof was given that the persons who signed it were magistrates, or that the signatures were the signatures of the said persons; and it was held that the examination must be authenticated before it could be received, and does not prove itself *prima facie*, though the paper is in the form prescribed by the statute.

Rex v. Warminster, 3 B. & Ald. 121. Abbott, C. J. "It has been contended that the words 'at any time' do not mean at a time when the pauper was either absent from this country, or when he was dead. I cannot however find any thing in the act from which I can infer that it was the intention of the legislature to restrain those words to the life of the pauper, or during his residence in this country. On the contrary it seems to me that it may have been the intention of the legislature to preserve the memorial of the evidence of the settlement of a person whose life is exposed to more than ordinary risk. I think therefore the examination ought to have been received in evidence." Order of sessions quashed. In the Mutiny Act, 5 Geo. IV. c. 13, and also in the 1 Geo. IV. c. 6, it is expressly provided that the examination and attested copy shall be evidence, although such soldier be dead or absent from the kingdom.

Rex v. All Saints, Southampton, 7 B. & C. 785; 1 M. & R. 663; 1 M. & R. Mag. Ca. 351. E. Carden was removed from Romsey Extra to All Saints, Southampton. Order confirmed. Case:—The pauper was the widow of Richard Roe Carden, deceased; and to establish his settlement the respondents duly proved the following paper:—

"Town of Romsey Infra, in the } The examination of Richard Roe Carden, a
county of Southampton. } private soldier in his majesty's 25th regiment of
foot, taken on oath before us, two of his majesty's justices of the peace for the said
town, the 6th day of April, 1782, touching the place of his last legal settlement.
The said examinant on his oath saith, that he was born in the parish of Romsey
Infra, as he hath heard and verily believes, where his father was a settled parishioner;
that about fifteen years ago last harvest, he hired himself as a covenant servant for
a year to David Pallant, of the parish of All Saints, in the town and county of
Southampton, esq. at the wages of 4*l.*, and in consequence thereof he entered into
the service of the said David Pallant, and served him there till about Christmas
following, when this examinant went with his master and his family to London,
where he staid with him about three months, when he returned with his said master
to the said parish of All Saints, and continued in his said master's service there
during the remainder of the said year, and at the expiration thereof he received his
full year's wages, and that he hath never done any act since to his knowledge,
whereby to gain a settlement; and that he hath a wife named Elizabeth, and one
child named Moses, aged two years and upwards.

(Signed)

Richard Roe Carden.

Sworn the day and year above mentioned, before us,

(Signed) { William Biggs, mayor.
Thomas Dawkins."

It was objected, that it did not appear on the face of it that at the time the examination was taken, the soldier was quartered in the town of Romsey Infra. The court however found the paper to be a due examination under the Mutiny Act. Bayley, J. "In this case I think there is not enough to make the examination evidence. The Mutiny Act gives a special power in certain cases; but for the statute this examination would be extra-judicial. By that statute, (a) if any non-commissioned officer or soldier shall have wife, child, or children, two justices may summon him where he is quartered, to make oath of the place of his last legal settlement, who shall obey such summons, and make oath accordingly: and the justice shall give an attested copy of such affidavit, to be delivered to the commanding officer, to be pro-

4. Of the Examination.

The examination must be authenticated by proof of signatures of justices, and that they were justices.

The examination is receivable in evidence, though the soldier is dead or absent.

The examination is not admissible unless on the face of it it appears that the soldier was quartered within the jurisdiction of the justices.

Quære, whether this fact must not proceed *aliunde*?

(a) 22 Geo. III. c. 4. And see 5 Geo. IV. c. 13, s. 72, by which the power of examination is given to one justice, and both the examination and the attested copy are directed to be admitted in evidence.

4. *Of the Examination.*

duced when required, which attested copy shall be at any time admitted in evidence as to such settlement, before any justices, or at any sessions; and if he be summoned again to make such oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced, he shall not be obliged to take any other or further oath with regard to his settlement, but shall leave a copy of such attested copy of examination if required. The justices therefore have no jurisdiction, except in the case of a soldier, nor unless the soldier is quartered within their jurisdiction. In the *Banbury Peerage case*, it was resolved, in 1809, by the judges, on a question put to them by the house of lords, that a bill in equity, or depositions, cannot be received in evidence against a party not claiming under the plaintiff or defendant in the chancery suit. Here the facts constituting the jurisdiction, namely, that the examinant is a soldier, and quartered within the jurisdiction, must be shown either *aliundè* or *ex visceribus*. I think it should have been made out *aliundè*. In *Rex v. Warminster* (*ante*, 861,) it was proved *aliundè* that the party was a soldier, and quartered within the jurisdiction. Here it merely appears upon the face of the examination, and you would make the examination proof of facts giving the jurisdiction. But even these facts are not represented to have been stated on oath; they are merely introduced as part of the description of the examinant. We are asked to supply by construction and intendment that which must at least have been proved before the justices. In *Rex v. Gouche* (a) the court said, that they would presume jurisdiction; but that decision was overruled in *Rex v. Halling*, (b) and *Rex v. Hulcott*, (c) in the last of which cases Lord *Kenyon* upon full consideration says, 'As it does not appear on the face of this order that the justice had jurisdiction, the pauper was not legally discharged from her service. There is no material distinction in principle between this case and cases of orders. If it were sufficient to state the jurisdiction upon the face of an order, there would be no difficulty here. If that be not sufficient, there must be proof *aliundè* to make the examination evidence.' Here the facts necessary to give the jurisdiction are not all stated upon the face of the instrument, nor are they proved *aliundè*. *Holroyd, J.* "The distinction between courts of special and general jurisdiction is laid down in *Miller v. Seare*, (d) and though that case is overruled (e) as to the point there decided, that an action would lie against commissioners of bankrupt for a wrongful commitment, that distinction is well established. The rule, *omnia præsumuntur ritè esse acta*, does not apply to the facts which constitute the jurisdiction. In a plea of justification all the facts which show the jurisdiction must be stated, and they must also be proved. Here those facts neither appear on the face of the document nor are shown *aliundè*. It is therefore not necessary to decide whether it would have been sufficient if the facts had appeared on the face of the document. The case referred to, with regard to wages in husbandry, (e) is directly in point." Order of sessions quashed.

The pauper himself ought to be summoned and heard.

Rex v. Wykes, Andr. 238; 2 *Bott*, 819. A person ought to be summoned, and be heard before he be removed; for he may produce a certificate, or give other sufficient security, or show cause otherwise why he ought not to be removed; especially as he himself perhaps by the removal is likely to be the greatest sufferer; and therefore natural justice requires that he be not condemned unheard.

It is not necessary in all cases that the pauper himself should be examined.

But in *Rex v. Bagworth, Cald.* 179; 2 *Bott*, 644, objection was taken to the order, that it did not appear to have been made upon proper evidence; that it was made only upon examination of the premises; that the pauper himself must be examined; and was so holden in *Rex v. Wykes*. But by the court: "It cannot be necessary in all cases that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule. The case in *Comberbach*, 478, is in point: in that case *Holt, C. J.*, says, 'If it can be, 'tis fit it should be so, but not absolutely

(a) 2 *Salk.* 441; 2 *Lord Raym.* 840.

(b) 1 *Stra.* 8.

(c) 6 *T. R.* 583.

(d) 2 *Bla. Rep.* 1141.

(e) *Doswell v. Impey*, 1 *B. & C.* 163, 2 *D. & R.* 350.

necessary'." See *Rex v. Everdon* (post, 871), where Lord Ellenborough speaks to the law of this case.

Rex v. Jackson, 1 T. R. 653. A rule was obtained for an information against justices of Kendal, for committing a pauper to prison, whom they were examining relative to his settlement, for *not answering a particular question*. Under which commitment he continued in prison for thirteen days, which it was contended was so manifestly illegal, that they must have known they were exceeding their authority, and therefore that it must be intended that they acted from corrupt motives. But it appearing on reading the affidavits on both sides, that no corrupt motives were to be imputed to the defendants, the rule was discharged. *Ashhurst, J.* said, "He would not then decide whether magistrates have, or have not, a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined." *Buller, J.* said, "With regard to the power of commitment, he did not know how justices were to act, unless they had such a power. This commitment, 'until he should answer,' he thought right; and though the pauper continued in prison under the commitment thirteen days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions." Rule discharged.

By 59 Geo. III. c. 12, s. 28, it is enacted, "That it shall be lawful for any justice of the peace, to take in writing the examination on oath of any person having a wife, or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable, or other peace officer, by virtue of any warrant or commitment, touching the place of his or her last legal settlement; and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence as to such settlement before any justices, for the purposes of any order of removal, so long only as the person so examined shall continue a prisoner."

4. Of the Examination.

A pauper refusing to be examined, justices may commit him.

Examination of prisoners to their settlements made evidence.

5. THE FORM OF THE ORDER OF REMOVAL. (a)

We have seen what are the principal requisites of these orders, *ante*, 820 to 863. We will now notice some of the formal parts.

5. The Form of the Order of Removal.

1. The County and Date of Order.

It must appear distinctly in the order in what county it is made, and to name the county in the margin, without any statement in the body of the order, that the place is in such county, or in any words of reference, as *in the said county*, or *in the county aforesaid*, will not be sufficient. (*Sett. & Rem.* 151: 2 Sess. Ca. 181.)

1. The County and Date of Order.

The county must appear in the order.

Rex v. St. Stephenson, 1 Barnard. 177, 196. There was an order of removal by the justices of the town of Bedford, from the parish of St. Peter's in Bedford, to the parish of St. Stephenson, in the county of Bedford, and it was only said in the margin *the town of Bedford*, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this Bedford lay in, because the appeal must be to the justices of that county where it lies. And the court was of this opinion, but did not quash the order, by reason of a flaw in the *certiorari*, by which it was removed.

(a) See the Forms, post, Appendix.

5. *Of the Order of Removal.*

Distinction between orders and indictments.

2. *The Description of the Paupers.*

Pauper to be named, if known; if not, say whose name is unknown.

An order cannot remove more parties than complained of.

An order to remove a man and his family is bad.

Children should be described by name, and *seem* age.

Not necessary to state the age of the children.

Must adjudge the settlement of a child of ten years.

The order must set forth the ages of children, unless their settlement is adjudicated.

Rex v. Holbeck in Leeds, Burr. S. C. 198; 2 *Bott*, 864. The borough of Leeds was in the margin, and the direction was, to the churchwardens, &c. of Holbeck, in the said borough. And by the court. "That is well enough. and the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as a part of the order, and a clear plain reference to it is sufficient; but in indictments, the county must be expressed in the body, and a reference to the margin is not sufficient."

2. *The Description of the Paupers.*

The name of the person, if known, (a) must be stated in the order, and where children are included they must be separately named, and their ages stated, unless the order specially adjudge the place to which the removal is made to be their last place of legal settlement; nor can more than one person, and those who derive their settlement from such person, as wife or children, be included in one order. If the order state the age of any child removed with his parent at more than seven years, it may set forth that the child has not gained a settlement in his own right, or adjudge the place removed to is his settlement.

Southwell v. Needwell, Sett. & Rem. 57; 2 *Bott*, 760. "Whereas a certain woman hath intruded, these are therefore to require you to convey:" Objection, it is not said who this woman was. *Parker, C. J.* "You must either name her, or say a certain woman unknown."

Rex v. Newington, Sett. & Rem. 45; 2 *Bott*, 760. Whereas J. S. hath intruded into the parish of A. and is likely to become chargeable; these are therefore to require you to remove him *with three children*. The court quashed this order, for the justices have removed more than is complained of.

Johnson's case, 2 *Salk.* 485; 2 *Bott*, 837. Order to remove a man, his wife, and family, from Brood to Sandhurst, not good, because too general; for some of the family might not be removable, they might have a settlement in Brood, though Johnson had not.

Beaston v. Scisson, 1 *Stra.* 114. Order for removal of Thomas Block and his family; upon the first reading quashed as to the family, because too general.

Flixton v. Royston, 1 *Sess. Ca.* 11; *Fol.* 278. Order to remove Jane Smith and her five children, quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children; for she might have more children than five, and some of those five might have gained settlements.

Ringmore v. Petworth, Sett. & Rem. 41. The order was, "Whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at Ringmore." It was moved to quash the same, because the children's ages were not set forth. But by the court: "It is not necessary in this case; for the order says, they were last legally settled in Ringmore, and then no matter what their ages are."

Hobey v. Kingsbury, 1 *Stra.* 527. Two justices adjudging the settlement of the husband to be at Kingsbury, and that he is likely to become chargeable to Hobey, send him, his wife, and son of *one year old*, to Kingsbury: and whether this was good as to the wife and child was the question: And it was held to be well enough. Order confirmed.

Rex v. Middleham, Fol. 271. Order to remove a child, of the age of ten years, to Middleham, because Middleham was the place where his father was last legally settled, quashed by the court; because there was no adjudication that Middleham was the place of the child's last legal settlement, and at that age it might have gained a settlement.

Rex v. Trinity in Chester, 2 *Sess. Ca.* 74; 2 *Bott*, 867. This rule was laid down: Every order that concerns the removal of a father and his children ought to show the ages of the children; for they may have gained

(a) In *Rex v. Maidstone*, 12 *East.* 550, one of the paupers was described as "an infant male child not baptized."

a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right: but if it appears upon the order that the child was above seven years old, the order must set forth that such child hath not gained a settlement in his own right.

Rex v. Bowling, Burr. S. C. 177. The order removed the father and children (without setting forth their ages) from Bradford to Bowling, and adjudged Bowling to be the place of the father's last legal settlement. By the court: "The established rule is, that where the children are sent in consequence of their father's settlement, either *the ages of the children must be set out* (to show that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. Therefore it is bad as to the children."

Chewton v. Compton Martin, 1 Stra. 471. An order made by two justices for the removal of two different families, was quashed by the sessions; and in support of the decision of the sessions, it was argued that the removal of one might be legal, and of the other illegal; and then upon an appeal to the sessions against the order generally, there would be great difficulty as to costs, the 8 & 9 W. III. c. 30, giving costs to the parish in whose favour the appeal is determined, because it could not be said that the order is reversed, because it stands good as to part, and it cannot be said to be confirmed, because it was not held good as to the whole. *Eyre and Fortescue, Js.*, were of opinion that the order was ill, giving this further reason, that the party removed had a right to appeal, for it may be that he was removed from his own estate, and then, upon his appeal, it will consequently draw over the other matter, in which, perhaps, the parties on all sides acquiesce. Order of sessions confirmed.

Reg. v. Graffham, Sett. & Rem. 16; 2 Bott, 808. The order sets forth, that Henry Tate and his wife do *endeavour* to intrude into the parish; and quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it.

5. Form of Order of Removal.

Different persons cannot be removed by the same order upon independent settlements.

Must have come to inhabit.

3. Of the being Chargeable. (a)

We have already had occasion to consider some of the circumstances that render a person chargeable. And by the 56 s. of 4 & 5 Will. IV. c. 76, (see App.) all relief given on account of the wife or child under the age of 16, not being blind, or deaf and dumb, shall be considered as relief given to the husband or father; and relief given on account of such child of a widow shall be considered as given to the widow. And by the 57th sect. the husband is liable for the maintenance of the children, legitimate or illegitimate, of his wife, from before his marriage, and is chargeable with all relief, or the cost price thereof, until the child is 16 years of age, or the mother dies.

Before this statute, relief to any unemancipated child was considered as relief given to the parent. And in *Rex v. Mile-End* (*ante*, 841,) the judge declined to give an opinion as to the effect of this statute upon relief given to a child above the age of 16 years. As a general rule, a statute will not be so construed as to operate as a repeal of the previous law, unless its provisions are inconsistent with it. But it may be observed that there was no distinct authority for the position, that relief given to an unemancipated child rendered the parent chargeable, and the object of the statute might have been to introduce a sensible and definite rule on the subject; and unless this was the object, the section will be of little importance, and will be applicable to those cases only (which are of rare occurrence) where the child receiving relief has been *emancipated* under the age of 16. If this section should be considered as declaratory, one effect will be, that relief given to a child under the age of

3. Of the being chargeable.

(a) *Archbold's Summary by Clarkson*, and *2 Bott's Poor Law by Pratt*, 686, and *2 Nolan, P. L.* 224.

5. *Form of Order of Removal.*

The order must adjudge the pauper to be chargeable to the parish removed from.

Same point.

Same point.

Same point.

16, if the child is blind, or deaf and dumb, will not render the parent chargeable.

Rex v. Bradford, Sett. & Rem. 40. *Likely to become chargeable, (a)* but not said to what parish. Quashed.

St. Nicholas, Gloucester, v. St. Peter's, Bristol, 2 Sess. Ca. 73. Upon an order of removal of Mary White, the reciting part of it was, "Whereas the pauper was likely to become chargeable to the parish of St. Nicholas:" but in the adjudicating part it was only said, that she was likely to become chargeable, without saying to the parish of St. Nicholas. The court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the court will not intend a jurisdiction in the justices, where they do not entitle themselves to it on the face of the order.

Rex v. Bourn, Burr. S. C. 39. The complaint was, that the pauper was likely to become chargeable to the parish of Spalding; and the adjudication was, that the pauper was likely to become chargeable, generally, without saying *to the said parish of Spalding*. And by Lord Hardwick, C. J. "There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish. And he cited the above case of *St. Nicholas v. St. Peter's* (*supra*), as similar to the present; and said that *Rex v. Witham* (b) was not finally determined by the court, but was referred to the judge of assize." And he added, "that there was no case that he could meet with, upon the strictest enquiry, where an adjudication at large, without some words of reference to the complaint, has been holden to be good."

Rex v. Ufculm, Burr. S. C. 138; 2 Bott, 870. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "and whereas upon due examination and inquiry, it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By Lee, C. J., and the court: "The objection is fatal. A complaint must appear 'of the pauper's being likely to become chargeable to the parish from whence removed;' and there must be an adjudication of the truth of it. (c) For the justices have no authority, without such complaint, and an adjudication of the truth of it. We cannot support an order by implication. There is no necessity indeed for any particular set or form of words. But there must be an adjudication of it in some words or other." Order quashed. Same point in *Rex v. Netherton, Burr.* S. C. 139, where the order was given up as indefensible. Same point in *Rex v. Hucheston, Burr.* S. C. 287.

4. *Of the Adjudication.*4. *Of the Adjudication.*

It is not sufficient that it appears upon the order, that the complaint and examination were regularly made, and that the removal is ordered in consequence, but the justices must expressly adjudicate upon the chargeability of the pauper and the place of his settlement. [See the forms of orders of removal *post*, Appendix.]

Suddlecomb v. Burwash, 2 Salk. 491; 2 Bott, 858. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices.

Rex v. Westwood, 1 Stra. 73; 2 Bott, 782. Order quashed, because the

The justices must make an express adjudication.

(a) These were the words used before stat. 35 Geo. 3, c. 101.

(b) A contrary doctrine had been held in that case, 1 Stra. 142; also in *Maidstone v. Dething*, 1 Stra. 393, and *Rex v. Leofield*, 2 Stra. 698, which are

not considered to be cases of authority, and are therefore omitted.

(c) And it must now be shown that the pauper *had actually become chargeable*, 35 Geo. 3, c. 101, ante, 823.

justices only say, *We order him to be removed to such a place, as the place of his last legal settlement*, without adjudging that to be the place.

Rex v. Minchin Hampton, 2 Sess. Ca. 93. Order, "Whereas complaint is made to us, that such a person is now become chargeable; we do adjudge that the last place of his lawful settlement is in the parish of Minchin-Hampton." Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason.

Stallinburgh v. Harlay, 1 Sess. Ca. 131; 2 Bott, 848. "On examination we do believe the same to be true." Quashed; for a man may believe a thing on uncertain evidence.

Reg. v. Waltham Magna, Sett. & Rem. 38: 2 Bott, 844. "Whereas such a person is likely to become chargeable, as we are credibly informed, these are therefore to require you to remove." Quashed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another.

Bury v. Arundel, 2 Salk. 479; 2 Bott, 584. "Whereas complaint hath been made unto us, that Jacob Duckin, with his wife and children, came from his place of abode and last legal settlement in Bury to Arundel, we therefore require you to remove." Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that Bury was, which doth not appear whether true or false.

Egburn v. Hartley-Wintley, 1 Sess. Ca. 45; 2 Bott, 847. An order adjudges that a man was settled at such a place; and therefore they remove his widow thither. Quashed; for that here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband.

Rex v. Warnhill, 2 Sess. Ca. 92; 2 Bott, 662. Adjudication that the last legal place of the pauper is at Warnhill, in the county of Berks. Quashed; for that is no adjudication of the settlement.

His "legal place" insufficient.

Anon., 2 Salk. 473. It was held that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged.

Crowland v. St. John the Baptist, 19 Vin. Ab. 399, n. 2. The justices need not allege *how* he was settled, nor negative the fact that the pauper did not rent a tenement of 10l. a year. (*Weston Rivers v. St. Peter's*, 2 Salk. 492; 3 Salk. 255.)

Reg. v. St. Mary Ottery, Sett. & Rem. 32; 2 Bott, 346. The justices say that the poor person was last settled there, *according to their knowledge*. By the court: "They should have said, he was last settled there: an order is a judgment, and must be certain and positive: he might have been settled elsewhere and they not know it." Quashed.

Rex v. Maulden, 2 Man. & R. 146; 8 B. & C. 78. This was an appeal (as stated in the notice) "against an order of settlement and maintenance" of a lunatic, and the order stated, that the justices, after due examination, *having adjudged* the legal place of settlement of A. C. to be Maulden, did require, &c. Lord Tenterden, C. J. "I think that on reading the order and the notice of appeal, we must assume that there was but one order, and one proceeding. The appellants by the notice of appeal treat the order in question as an order of settlement. That being so, the first question is, whether there appears on the face of the order a sufficient adjudication by the justices that the pauper's last place of settlement was in Maulden? The justices say in their order 'that they by virtue of the powers vested in them by the statute 5 Geo. IV., after due examination had on oath, *having adjudged* the legal place of settlement of the pauper to be in Maulden.' Now it is conceded, that if the justices had said 'that they *do adjudge*,' it would have been sufficient. As the appellants, however, by their notice of appeal treat the order in question as an order of settlement, we must assume that there was no other order made; and if that be so, we cannot understand the words 'having adjudged' to have been used in any other sense than that which would have belonged to the words 'do adjudge.' The next question is, is the order good altogether? It is objected to as being retrospective. The effect of a retrospective order

When "having adjudged" is sufficient.

5. *Form of
Order of Re-
moval.*

The 9 Geo. 4, c. 40, s. 38, does not authorize a *retrospective* order for the maintenance of a lunatic. And an order stating that the justices *have* adjudged that the pauper's settlement is in a particular parish was held sufficient, though the form given in the schedule to the act was not pursued, and the order contained no words of *present adjudication*.

*Form of Order of
Removal.*

is to bring on inhabitants who ought not to bear it a charge incurred during a former period. It is quite unnecessary that the justices should have the power of making a retrospective order; for an order for the payment of a weekly maintenance might have been made as soon as the pauper was placed in the asylum; and as there is not any necessity that the justices should have such power, and as no such power is expressly reserved to them, I am of opinion that they had it not. This order, therefore, so far as it relates to the bygone time is bad, but good as to the residue." Rule absolute for quashing the order as to the 10*l.* 16*s.*, discharged as to the residue.

Rex v. St. Nicholas, Leicester, 4 Nev. & Man. 624. In November, 1832, Henry Beaumont was removed to the house of Joshua Burgess, licensed for the reception of insane persons, by the following order:—"To the overseers of the poor of the parish of Barrow-upon-Soar, in the county of Leicester. Whereas Henry Beaumont, of Barrow-upon-Soar aforesaid, who is deemed to be insane, and who hath been wandering about and at large there, hath this day been brought before us, C. M. Phillips and C. W. Parke, Esquires, two &c., pursuant to an order under our hands and seals for that purpose: And thereupon we the said justices, having called to our assistance S. Ed-dowes, surgeon, and upon examination had of him the said H. Beaumont are satisfied *that he is so far disordered in his senses that it is dangerous for him to be permitted to go abroad*; and having made inquiry into the circumstances and place of the last legal settlement of the said H. B., *we have adjudged* that his said settlement is in the parish of St. Nicholas, in the borough of Leicester:—You are therefore directed to cause the said H. B. to be conveyed to the house of J. Burgess, of Great Wigston, in the said county, duly licensed for the reception of insane persons. Given &c., 29th November, 1832." On the 2d November, 1834, an order, directed to the overseers of St. Nicholas, Leicester, was made by the same justices; which, after reciting the mandatory part of the former order, proceeded as follows:—"And whereas it appears to us the said justices, that the said H. Beaumont was, pursuant to our said order, forthwith conveyed to the house of the said J. Burgess, where he now remains: We therefore do hereby order and direct that you, the overseers of the poor of the parish of St. Nicholas aforesaid (the legal settlement of the said H. Beaumont being adjudged to be in your said parish), do and shall pay the weekly sum of 18*s.* unto the said J. Burgess for the maintenance, medicine, and care of the said H. Beaumont, during so long a time as the said H. Beaumont *hath been* and shall be under the care of the said J. Burgess, the said J. Burgess being willing to accept such weekly sum, and which appears to us to be a reasonable charge in that behalf. Given, &c." These two orders were removed by certiorari, and a rule nisi obtained for quashing them. Lord Denman, C. J. "It appears quite plain from the terms of the act, and from the judgment of Lord Tenterden in *Rex v. Maulden* (*ante*, 867), that a *retrospective* order cannot be supported; because by the act of parliament the power is only given to make an order for *future maintenance*. But with regard to the first order, there is in my opinion no valid objection to it. It proceeds on the 44th clause, which enacts [his lordship here read sect. 44, of the 9 Geo. IV. c. 40]. The justices are authorized to proceed in the same way with regard to the persons to whom that section relates as had been directed by the 38th section. Now according to s. 38, which refers to the schedule No. 5, there are only three descriptions of persons, viz. persons who are lunatic, insane, or dangerous idiots, for whose maintenance an order is authorized to be made; and the 44th section introduces a new description, viz. a person *so far disordered in his senses*, that it is dangerous for such person to be permitted to go abroad. In such a case section 44 requires the order to be made in conformity with the form given in the schedule No. 5, which is referred to by section 38. As section 44 requires the order to be made according to the form in the schedule, it must necessarily introduce into the meaning of the words of the form that new description of persons. The order in this case does not say, in the precise language of the form in schedule 5, that the party is a lunatic, insane, or dangerous idiot. Probably it would have been more correct to have in-

troduced that form of words. The form, however, is sufficiently complied with when in every other respect the order follows the language of the schedule." *Littledale, J.* "I am entirely of the same opinion. By section 44, (which relates to persons not chargeable, whereas section 38 relates to poor persons chargeable to any parish), this person is brought within the jurisdiction of the justices; for it appears that he was a person wandering about and at large, and deemed to be insane, and not chargeable to any parish, and that he was brought before the justices, and was found to be so far disordered in his senses that it was dangerous for him to be permitted to go abroad. The justices are also to inquire as to the settlement of the party. This they have done. By section 44, therefore, the justices have jurisdiction, and they are to exercise that jurisdiction in the manner therein pointed out. An objection is made to the form of the order, but it exactly pursues the form given in schedule 5, except where that form is adapted to a person who is lunatic, insane, or an idiot." *Patteson, J.* "I am of opinion that the rule must be made absolute so far as regards quashing the *prospective* part of the second order. The first order appears to me to be good. The objection to the first order, as to the adjudication of settlement, is answered by Lord *Tenterden* in *Rex v. Maulden* (*ante*, 867). We must construe the words 'have adjudged' as if they were 'do adjudge.' With regard to the objection as to the *form* of the order, we must look at section 38 coupled with section 44. It is evidently intended that when a party is deemed insane, wandering abroad, the justices should proceed in the manner pointed out in section 38, and that the form of order should be such as would apply to the circumstances of the case. In the form given in the act, the words 'as the case may be' are inserted after the words 'lunatic, insane, or idiot.' I do not mean to say that if the order in this case had used the word 'insane,' it would not have been good. Looking at section 44, the legislature seem to have used the words 'a person being so far disordered in his senses that it is dangerous for him to go abroad' as a definition of the insanity; for section 44, after directing an examination whether a person is so far disordered in his senses, that it is dangerous for him to be permitted to go at large, goes on to say, that the justices shall make inquiry into the settlement of such *insane person*. As to the *retrospective* part of the second order, *Rex v. Maulden* (*ante*, 867,) is directly in point, and this cannot be distinguished from that case." *Coleridge, J.* "I am of the same opinion. Two objections have been made to the order of November, 1832; of which the first is, that it does not follow the form in the schedule in the act. If the words of section 44 are examined, it will be found that there is nothing there said which makes that necessary. The act only directs that the parties shall proceed in the same manner before directed in the case of a person chargeable to any parish. Then when section 38 (which applies to persons chargeable) is looked at, the only direction there is, that *it shall be lawful* for the justices to make an order according to the form in the schedule, not that they are *always* to make use of that form, but they are to frame the order *according* to that form. It never can be contended that the very words of the form are to be used. The form states that the person is chargeable to the parish, without any restrictions with reference to the 44th section. It never could be the intention of the legislature, that a form untrue in fact should be used. The form in the schedule contemplates persons lunatic and insane, and idiots. A person not fit to walk abroad may be insane, but the 44th section, in my opinion, applies to a different class of persons from those described in section 38. The first objection, therefore, cannot be sustained. The other objection is, that there is no adjudication of the settlement. The first order is not directed to the parish to which the person is *to be removed*, but to the officers of the parish where the party is *found*. The words 'have adjudged' may be construed to mean 'do adjudge;' but surely if these words could not bear this meaning, yet as the section does not direct in what manner, or when, or where, an adjudication of the settlement is to be made, it would be quite sufficient for the justices to say 'we *have* adjudged' that the settlement is in a particular place. I quite agree that the second order is bad, in so far as it is

5. *Form of Order of Removal.*5. *To whom Order directed.*

Orders to be executed by the officers of the removing parish.

Must not be to both parishes to remove and receive.

6. *Time and Manner of Serving or Executing the Order of Removal.*

When served a year after it was made, good.

But three years after was held unreasonable.

Pauper not to be removed till twenty-one days after notice of order of removal has been made, &c.

What is a valid service.

Paupers to be removed under an order may be conveyed by other persons than the

retrospective." Second order quashed so far as relates to payments in respect of a by-gone period.

5. *To whom Order directed.*

St. George v. St. Olave's, 2 Salk. 493; 2 Bott, 665. The order was to convey to the parish of St. Olave, and it was directed, to the churchwardens and overseers of the poor of the parish of St. Olave. Quashed; for they ought and can only order the parish officers where the intrusion is made to make the removal.

It is not necessary to use the word *churchwardens*; if directed to the overseers it is sufficient. (*Rex v. Searle*, 1 Bott, 3.)

An order directed to officers of both parishes to remove and receive is bad, because it is entire. (*Comb.* 325.)

Rex v. Alverstone, 7 T. R. 564. The order was directed to the churchwardens, &c. of the parish, township, or division of U. and it was wished to have the opinion of the court whether such description was proper; and Lord Kenyon said, that as at present advised, he saw no objection to it. The order was quashed on another ground.

It is not necessary that the pauper should be conveyed by the overseers.

6. TIME AND MANNER OF SERVING OR EXECUTING THE ORDER OF REMOVAL.

In *Llanwinio*, 4 T. R. 473, one of the objections was, that there was an interval of a year between the signing of the order and the execution of it. Upon which Lord Kenyon said, there might be some weight in that objection, if the circumstances of the pauper had been altered, but nothing of that kind is stated here—nor indeed is any question referred to us on this point.

As to the service of an order of removal which has been suspended, see cases *infra*.

But in *Rex v. Lampeter*, 5 D. & R. 310; 3 B. & C. 454 (*post*, 873), as to the service of an order of removal which had been suspended, and which was not served till three years afterwards, the court held it an unreasonable time, and it was treated as a nullity. (See the cases, *post*, 873.)

To prevent the too precipitate removal of a pauper after the order has been obtained, the 4 & 5 W. 4, c. 76, sect. 79, (see *post*, Appendix), enacts that no poor person shall be removed under an order of removal until twenty-one days after notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: Provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: Provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired, or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal.

In *Rex v. Alnwick*, 5 Bar. & Ald. 184 (*post*, 876), it was held, that the service of the order of removal, to render the same valid, must be by delivery of the order itself, or by serving a copy of the order, and producing at the same time the original.

By 54 Geo. 3, c. 170, sect. 10, it was enacted, "that it shall and may be lawful for the churchwardens, overseers, or others having the control, ordering, or management of the poor of any district, parish, township, or hamlet, to employ any proper person or persons whomsoever to carry, remove, and

deliver any pauper or paupers ordered to be removed by any of his majesty's justices of the peace, competent to make such order; and that a delivery by such person or persons of any pauper or paupers so ordered to be removed shall be as good, valid, and effectual to all purposes whatsoever, as if the same was or were delivered by any churchwarden or overseer whatsoever."

Since this statute, although perhaps not strictly requisite, it has been considered advisable for the churchwarden and overseer to subscribe to a written deputation to the constable or other person appointed to remove the pauper; and the form of such deputation will be found in the Appendix.

6. Time, &c. of Serving Order.

churchwardens or overseers themselves.

7. OF SUSPENDING ORDERS OF REMOVAL.

By 35 Geo. III. c. 101, s. 2, (a) it is provided, "that if any poor person shall be brought before a justice, for the purpose of being removed by virtue of any order, or any vagrant pass, and it shall appear to the justice that such person is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him so to do, the justice is required and authorized to suspend the execution of the same until it may safely be executed; which suspension of, and subsequent permission to execute the same, shall be indorsed on the order of removal or vagrant pass, and signed by the justice; and the charges incurred by such suspension may be directed to be paid by the parish to which such person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order." (b)

The statute then provides a remedy for the costs, and gives a right of appeal, where the same shall exceed 20*l*.

The 49 Geo. III. c. 124, s. 1, (c) provides, that when any order of removal or vagrant pass shall be suspended, any other justice of the county or place where such removal or pass shall be made, may order the same to be executed.

And sect. 3 provides against the separation of husband and wife, or other persons nearly connected with each other, and living together as one family at the time of any order of removal made, or vagrant pass granted during the sickness of any one of such family.

Rex v. Everdon, 9 *East*, 101. An order was made to remove a pauper from Everdon to Wappenham, and suspended. By an order reciting the death of the pauper, and that 20*l*. 8*s*. 6*d*. expense had been incurred by the suspension, the same magistrates directed the parish officers of Wappenham to pay that sum to Everdon. Against this last order there was an appeal. Order quashed. Case:—The order of removal was made upon the examination of the pauper's father only, who swore that the pauper, from excessive infirmity and sickness, was unable to be brought before the justices who made the original order for examination, and that the said justices at the same time made the order for suspension. The pauper died without having been removed, and she had never been before the justices at any time upon the matter, nor been examined by them when they made the order of suspension. Lord *Ellenborough*, C. J. construed the words, "In case any poor person shall from henceforth be brought before any justice or justices of

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35 Geo. 3, c. 101. Justices empowered to suspend orders of removal of sick or infirm persons.

Charges incurred by such suspension to be paid by the officers of the parish to which they are ordered to be removed, which may be levied with costs.

It is not essential that the pauper should, but his case must, be brought before the justices; and pending illness of pauper an order, suspending his removal may be made in his absence.

(a) See this section at length, *ante*, 823.

(b) This act, improvidently, does not enable a magistrate to enforce reimbursement from time to time, but only in the event of actual removal or death. The consequence may be a long illness, and incapacity to be removed for many years; and then the burthen of reimbursement falls at once heavily upon the then inhabitants of the parish, instead of having been equalized amongst the inhabitants from time to time during the

whole term. It has in this respect a twofold unjust operation; for the officers of the relieving parish may for years have to bear the expense, and their successors, who bore no part of the burthen, will receive in a lump the whole amount. In the parish of Wallop a pauper lived from 1808 till 1832 under a suspended order of removal, and the expense was 158*l*. 6*s*. 6*d*.

(c) See the section at length, *ante*, 825.

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the peace for the purpose of being removed," to mean, in case a question concerning the removal of any poor person shall be brought before the justices of the peace for the purpose of his removal, &c. And he said that the language of the act adverted to the case which most generally happens, where the pauper is brought before the magistrate to be examined as to his settlement; but that it appeared from *Rex v. Bagworth* (*ante*, 862), that it was not necessary in all cases, though if it can be, it is fit it should be so, but not absolutely necessary. And that all that the act meant was, not that where any person was brought personally, but where his case was brought judicially before the magistrates, for the purpose of his removal, that they should have power to suspend the execution of the order of removal, if it appeared to them by due examination of the facts, that from sickness or infirmity of the party due removal could not then safely be made. And he added, that in thus straining the words of the act, he did not go further than was done in *Antony v. Cardigan* (*ante*, 332), where the description of a person *not having any child* was construed to mean not having any child which could be a burthen to the parish where the father was hired and served. The other judges agreed, and the order of sessions quashed.

The power of ordering the charges incurred during the suspension of an order of removal to be paid is confined to two cases only, viz., the death or removal of the pauper; and therefore where a pauper, during the suspension of an order of removal, became irremovable in consequence of an estate descending to him: Held, that such a case was not within the act.

Rex v. Chagford, 4 B. & Ald. 235. On the 2nd December, 1816, two justices removed William Endacott from Chagford to Staverton. This order was suspended. On the 1st of July, 1817, the parish officers of Chagford, believing the pauper sufficiently recovered to be removed, obtained an order, taking off the suspension, and also for the payment of 22*l.* 17*s.* 1½*d.*, the expense of the suspension. Immediately after this order was made, it was ascertained that the pauper was still too ill to be removed, and on the 7th of July the justices signed a second order of suspension. On the 16th of May, 1819, the pauper's father died at Chagford, and by his death two freehold houses in Chagford descended to the pauper as heir-at-law. (a) The parish of Chagford thereupon ceased to relieve the pauper. On the 7th of February, 1820, another order was made for the removal, and also for the payment of 60*l.* 9*s.* expenses of the suspension. The pauper was never removed; but on the 18th of February, 1820, the appellants were, for the first time, served with the order of removal, and with the several other orders here mentioned, and on the same day payment was demanded of the expenses incurred by the suspension. The parish of Staverton gave notice, that they intended to appeal against an order made by B. Fulford and G. Gregory, bearing date the 1st of July, 1817, so far as the same order directs the payment of 22*l.* 17*s.* 1½; and also of an appeal against another order by B. Fulford and G. Gregory, bearing date the 7th of February, 1820, so far as that order directs the payment of 60*l.* 9*s.* The sessions quashed both orders. *Abbott, C. J.* "In this case we are called upon to put a new construction on this act of parliament, which was passed in order to prevent a grievance, arising from the too great temptation afforded to parish officers by orders of removal, to convey paupers from one place to another during sickness. The second section recites, that poor persons are often passed to the place of their settlement during the time of their sickness, to the great danger of their lives; and it gives a power to magistrates, in order to remedy this inconvenience, of not carrying their order into immediate effect, but of suspending its operation for a time. But then, in order to prevent this from producing any hardship to the removing parish, it provides, that no act done by the pauper during the suspension shall give him a settlement; and empowers the magistrates to order the intermediate charges to be paid by the parish to which the order is made, in case any removal shall take place, or in case of the death of such poor persons, before the execution of such order. This power, however, seems to me to be confined to these two cases only, viz. the removal and death of the pauper. Whether or not it would have been expedient for the

(a) It is provided by the statute *John, Hackney* (4 N. & M. 336), it (*ante*, 832), that no act done by the pauper during the suspension shall give him a settlement; and in *Rex v. St.* restriction.

legislature to have provided for the present case it is not for this court to say. All that we can do is to determine that the non-removal of the pauper prevents the case from falling within the act. I should have thought, indeed, that as the order of the magistrates, not being within the act, was altogether nugatory, the proper course for the sessions to have pursued would have been, not to have quashed the order, but to have dismissed the appeal. However, as they have done substantially right, I think their order ought to be confirmed." *Bayley, J.* observed, "that a very long period had elapsed, during which this order remained suspended, and no notice of it was given to the opposite party. If that notice had been given, (and there are no words in the act that supersede the necessity of it,) it might have enabled the other parish to have made prompt enquiry, and to have ascertained the fact relative to the settlement of the pauper." *Holroyd, J.* thought the statute could not be construed so as to apply to this case, although probably the legislature would, if it had occurred to them, have provided for it. Order of sessions confirmed.

Rex v. Englefield, 13 *East*, 317. An order was made for the removal of *J. Timms, E.* his wife, and two infant children, by name, from Englefield to Cassington; the order was suspended as to Joseph, until it should appear that he was sufficiently recovered from his illness to be removed without danger; and a third order was made on 17th March, 1810, which stated that Joseph died on the 7th instant, and that the charges incurred by the suspension amounted to 41*l.* 4*s.* 6*d.*, which they directed the parish of Cassington to pay. After the death of Joseph, his wife and children were removed under the first mentioned order from Englefield to Cassington; and on appeal against such order, and also the order for payment, the three orders were quashed, because the order suspending the order of removal had not been itself taken off by an order of magistrates on the death of Joseph. A difficulty occurred upon the opening of the case which the court thought could not be got over; upon what ground the sessions could quash these orders, which, upon the face of them, were all good, when the real objection to the removal of the wife and two children, if any, was the want of another order of magistrates taking off the suspension of the original order of removal. The respondents' counsel, indeed, suggested that the death of the husband operated as a natural death to the order of suspension, but the court did not decide the case on that ground, and it was observed, *e contra*, that the terms of the order of suspension did not apply to the case of death, but it was to operate till the sick person could be safely removed. For the other reason, however, the court quashed the order of sessions, and *Le Blanc, J.* referred to the precedent of a permission to remove after an order of suspension, given in the new (*viz.* the 21st) edition of *Burn's Justice*, as being best adapted to such a case.

No charges under a suspended order of removal can be recovered, unless a copy of the order and examination is served on the overseers within ten days of the order being made, by 4 & 5 Will. IV. c. 76, s. 84. See Appendix. Before this statute, it was required that the order should be served within a reasonable time.

Rex v. Lampeter, 3 *B. & C.* 454; 5 *D. & R.* 310; 2 *D. & R. Mag. Ca.* 437. Order was made on the 14th May, 1821, for the removal of *Gwen Rees*, widow, from Lampeter to Llanfairclydodge, but on the same day suspended on account of the age and infirmity of the pauper, which rendered it unsafe for her to travel. The same justices, on the 16th February, 1824, made an order, which recited that the pauper was dead, and that an expense of 12*l.* 13*s.* 6*d.* had been occasioned by the suspension, which they directed the parish of Llanfairclydodge to pay. Both these orders were served upon the appellants for the first time on the same 16th February, upon which they appealed against the order of removal, and the sessions held that the order of removal and suspension never having been served in the pauper's lifetime, nor after her death, until the money was demanded, the order of removal had become a nullity. *Abbott, C. J.* "I am of opinion that the sessions came to the right conclusion in this case. The utmost effect of *Rex v. St. Mary-le-bone* (*post*, 876,) is this; that the death of a pauper during the suspension of

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Where an order for the removal of *J. T.*, his wife and children, was suspended on account of the husband's sickness, who afterwards died, and the wife and children removed, *without taking off the suspension*, is no reason for the sessions quashing the order of removal.

The order must be served within ten days, to entitle the parish to any charges.

A suspended order of removal must be served within a reasonable time. Service after the lapse of three years, and after the death of the pauper, is not within a reasonable time.

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An order was made on the 21st of May, 1825, for the removal of a pauper to parish A., and suspended on the same day on account of the infirmity of the pauper. That parish had no notice of the order till the 12th of August, 1826, when it was served. Another order, dated the 24th of January, 1831, directed that the order of removal should be executed, and 80*l.* paid to the removing parish by parish A.; and this order was served on and the pauper removed to parish A. on the 16th of February, 1831. A. appealed to the then next sessions, and the sessions found that the original order of removal was not served within a reasonable time: Held, that it was not therefore void but voidable only by appeal, and that parish A. ought to have appealed to the next practicable sessions after it had notice of the original order.

an order for his removal does not render that order a nullity; and that a subsequent order for payment of the expenses is a grievance upon the parish to which the pauper is ordered to be removed, for which an appeal will lie against that order. No question arose in that case respecting the necessity of serving or giving notice of the order of removal, or the order for suspending it; that question arises, for the first time, in the present case. The legislature has not fixed any precise time for the service, but it is evident from the 49 Geo. III. c. 124, s. 2, that such an order *may* be served previous to a removal; and if a suspended order *may* be served, and reason and convenience require that it *should* be served before removal, the service should be within a reasonable time. In this case a period of three years elapsed between the issuing of the original order of removal and the death of the pauper, and during all that period no notice was given either of the original order or of the order of suspension. I am, therefore, of opinion, that the order of removal in this case was not served within a reasonable time, and consequently that the order of sessions must be confirmed." *Bayley, J.* observed, "that by the delay of three years, the opportunity of examining the pauper had been lost, and the expense incurred in supporting the pauper may be thrown upon persons not inhabitants of the parish during that period." *Littledale, J.* concurred.

Rex v. Penkridge, 3 Bar. & Ad. 538. An order was made by two justices of the county of Stafford, dated the 21st of May, 1825, for the removal of William Cooper to the parish of Leamington Priors, the execution of which order was (by another order of the said two justices indorsed on the order of removal and made on the same day) suspended on account of the infirmity of the pauper, which rendered him unable to travel. No notice of this suspended order was given to the parish of Leamington Priors until the 12th of August, 1826, when that parish was served with a copy of the order of removal, and the order for suspending the same. Against this order the parish of Leamington Priors did not appeal, until the removal of the pauper hereinafter mentioned. By another order made by two justices dated the 24th of January, 1831, and also indorsed upon the said order of removal, reciting that it appeared to the last-mentioned justices that the said order of removal might be executed without danger, and further stating that it had been duly proved to them, on oath, that the expense of 80*l.* 12*s.* 4*d.* had been incurred by the suspension of the order of removal; the two last-mentioned justices directed that order to be forthwith put in execution, and the churchwardens and overseers of the said parish of Leamington Priors to pay to W. S. therein mentioned on demand the said sum of 80*l.* 12*s.* 4*d.* This last-mentioned order, and the order of removal, and the order for suspending the same, were served on the parish officers of Leamington Priors on the 16th of February, 1831, the pauper was at the same time delivered to them and payment was demanded of the above-mentioned sum. The parish of Leamington Priors appealed against the suspended order of removal and the order of the 24th of January, 1831, at the Easter sessions for the county of Stafford in the year 1831, being the first sessions after the removal of the pauper and demand of the expenses. Upon the hearing of the appeal, the counsel for the appellants objected that the original order of removal had not been served within a reasonable time after it had been made. The court of quarter sessions were of that opinion, and quashed both the orders appealed against, subject to the opinion of this court on the above facts. *Cur. adv. vult.* Lord *Tenterden, C. J.* now delivered the judgment of the court. "This was a suspended order, of which no notice was given to the parish of Leamington Priors till fifteen months after it was made, the pauper having been, during that period, in such a state that it was improper to remove him. The order of January, 1831, in fact only took off the suspension. The suspended order was by two justices, who were to inquire and adjudicate as to the propriety of removing the pauper. The other order was by justices who were only to direct the execution of the first order and the payment of the charges attending it. The removal, therefore, was under the first order, and there was an appeal against it on the ground that as it was not served for so long a period after it was

made it was a mere nullity; and it was argued, that this being so, the appeal to the sessions next after the actual removal of the pauper was in good time. If the first order had by reason of the death of the pauper become inoperative, it would have become a nullity of course; but the objection here taken was, that it was not served within a reasonable time: the sessions have so found, and of that they are the proper judges. It is, however, a question for us whether the order was for that reason absolutely null and void or voidable only. In our opinion it was voidable only and ought to have been avoided by appeal to the next practicable sessions after it was served. By the omission to appeal to that sessions, the parish to which the removal was to be made lost its opportunity of making that objection to the order. In *Rex v. Lampeter* (3 B. & C. 454; 5 D. & R. 310; *ante*, 873), the appeal was to the sessions next after the service of the order. Besides, that was a case where the order was not served till after the death of the pauper, and it had therefore become a nullity. Here the pauper was living at the time when the order was served, and there might therefore have been an appeal to the then next sessions." Rule absolute for quashing the order of sessions.

Rex v. Kynaston, 1 East, 117. A rule to show cause why a mandamus should not issue to Mr. K., a magistrate of Essex, commanding him to indorse the warrant of distress issued by the magistrates for the borough of Colchester for 20*l.* 16*s.* 3*d.*, being the expenses incurred by the parish of Lexden in the maintenance of D. Glover and family in his illness, during the suspension of an order for removing him to his parish, and 30*s.* for the reasonable charges of the levy. D. G. on the 31st of May, 1799, as he was driving a waggon on the public road leading through Lexden, had the misfortune to break both his legs, and was immediately taken to the workhouse there, where he continued till the 31st of July. On the 6th of May, two justices took the pauper's examination and made an order for removing him and his wife, who was then attending him, from Lexden to Coggeshall in Essex; and at the same time the magistrates indorsed an order of removal, by virtue of the 35 Geo. III. c. 101, stating, that it would be dangerous to remove him at that time; and he continued there accordingly till the 31st of July, when the order of removal was by their permission executed. The same magistrates afterwards made an order on the parish officers of Great Coggeshall to repay the parish of Lexden 20*l.* 16*s.* 3*d.*, for expenses incurred in the cure and maintenance of the pauper: and the overseers of Great Coggeshall, not paying this within three days after demand, nor giving notice of appeal, as required by the same act, the magistrates granted a warrant of distress: but Great Coggeshall being without the jurisdiction of the magistrates granting the warrant, the parties applied to the defendant, who was an acting magistrate within the jurisdiction of Great Coggeshall, to indorse the warrant of distress for execution, which he refused, whereupon the present rule was obtained. Lord Kenyon, C. J. after looking into 35 Geo. III. c. 101, said, "It was impossible to make any question upon this part of it: it is peremptory upon the magistrate under these circumstances to indorse the warrant; he has nothing to do with the propriety of making the original order or granting the original warrants; he acts merely ministerially; in like manner as justices do in allowing a poor rate, whose signatures are mere matter of form. The justices, indeed, by whom the original order and warrant were issued, had a discretion to exercise upon the matter submitted to them: but the magistrate who merely indorses the warrant of another, under this act, is not answerable for the legality of it, which remains at the hazard of him who first granted it; here also, the order, being for payment of above 20*l.*, might have been appealed against by the parties who were dissatisfied with it, and then the merits of the question might have been discussed; but the court cannot do otherwise at present than make the rule absolute."

Rex v. Bradford, 9 East, 97. An order was made on the 7th of July, 1807, for the removal of S. Spires from Bradford to Melksham and suspended. On the 16th of September they directed the first order to be executed, and 41*l.* 14*s.* 9*d.* expenses of the suspension to be paid by Melksham to Bradford. On the 17th of September, the pauper was carried to Melksham; and a

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The justices cannot refuse to indorse the warrant for distress.

An appeal lies against an order of justices for payment of the charges of suspension after the three days.

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An appeal lies against an order of removal and also an order for costs under twenty pounds, where the pauper died before removal.

motion was made at the Michaelmas sessions following, to enter and adjourn an appeal against the order for the payment of the expenses, which was agreed to by the court; but they reserved the question, whether any appeal were allowed to the sessions, the appellants not having given notice of appeal *within three days* after the removal of the pauper to the respondent parish. But Lord *Ellenborough*, C. J. “held the meaning of the clauses to be clearly this; if the party aggrieved by the order, and intending to appeal against the amount of the charges, will give notice of the appeal within three days after demand made, he shall be relieved from the inconvenience of a distress: but though he neglect to do so, he only subjects himself to that inconvenience; for his right of appeal, which is afterwards given, is not thereby taken away; and if he afterwards think proper to appeal, within the time appointed by law for appeals against orders of removal, he is expressly empowered to do so.” Order of sessions confirmed.

Rex v. St. Mary-le-bone, Middlesex, 13 *East*, 51. An order was made on 3d July, 1809, for the removal of James Harlow from Hitchin to St. Mary-le-bone, the execution of which was at the same time suspended by reason of the sickness of the pauper. By an order of the 18th of September following, the same justices, reciting that J. H. was dead, directed the expense incurred by the suspension to be paid. St. M. appealed against the order of removal, and the order for the payment of the charges. The sessions dismissed both appeals, and stated, that neither of the orders of removal or suspension thereof were served on the parish officers of St. M. until after the death of the pauper, which happened between the 3d and 11th of July, 1809; after which time the parish officers of St. M. were served with the orders, and 5*l.* 2*s.* 8*d.* given thereby was demanded, at which time they gave notice of appeal to the parish officer of H. against the order of removal, and also against the order of adjudication for the payment of the charges incurred by the suspension. The respondents offered no evidence that the pauper was settled in the parish of St. M., but contended that no appeal could lie against the order of removal, as it had never been executed; and that there can be no execution of an order of removal, but by delivering the pauper to the officers of the parish. Lord *Ellenborough*, C. J. “The appeal is by the 3 W. & M. c. 11, s. 9, given to the party *aggrieved* by the determination of the justices respecting the settlement of the pauper; then, though the grievance grow by a subsequent statute, the party is still aggrieved by the order of removal. Before the 35 Geo. III., there was no grievance to the parish to which the order of removal was made, until it was executed: but that statute attaches a contingent consequence to the order itself in this case, which, coupled as it is with the order for payment of costs, makes it a *grievance*, though the pauper died before any removal in fact took place. Then the appeal against the order of costs is not against the quantum, but against the liability of the parish to pay any costs at all in this case; taking it as a consequence of the order of removal appealed against.” Order of sessions quashed.

Time of appealing, how computed. An order of removal, dated 1st August, 1814, and an order of suspension indorsed thereon, and a copy thereof was in 1814 served upon the appellants, but the original was not produced at the same time; and subsequently, in 1815, another part of the order and indorsement executed by the same justices, but bearing date in

Rex v. Alnwick, 5 *B. & Ald.* 184. Order of removal, dated the 6th of August, 1814, of M. Walker, from Alnwick to the chapelry of Haydon, at the Michaelmas sessions in 1820, was discharged. Case:—The pauper, at the time of the order, was in such a state of health that she could not be removed without danger, the execution of the order was therefore suspended. About the 6th September, 1814, a copy of the order and indorsement was served upon one of the overseers of Haydon, by a person sent by one of the overseers of Alnwick, such person not then having the order with him; and on the 4th October, 1815, another part of the original order of removal and indorsement was served upon one of the overseers of Haydon by the overseers of Alnwick. This last had not been executed by the removing justices on the 6th August, 1814, but by them in September, 1815. It however bore date the 6th of August, 1814. The order originally executed was not at any time shown to any of the overseers of Haydon. The suspension was taken off in August, 1819, and an order was then indorsed by the justices for the payment of 16*l.* 17*s.* 5*d.*, the charges incurred by the suspension. On the 5th

of September 1820, the pauper was removed from Alnwick to Haydon, and an appeal against the order of removal was entered at the Michaelmas sessions, 1820. It was contended that, according to the 49 Geo. III. c. 124, s. 2, (*ante*, 825,) the time of appealing against such order was to be computed from the time of serving the order, and not from the time of making the removal. *Abbott, C. J.* "The objection made here to the judgment of the court of quarter sessions, is, that they have allowed this appeal, when, in point of law, the appellants were not entitled to it, not having appealed within the time allowed by law. That question depends entirely upon the validity of the service of the order. Now that service, in order to be valid, must either be by delivery of the order itself, or by leaving a copy of the order, and at the same time producing the original. It is admitted that the service, in 1814, was defective; but then, in 1815, there was a second service. Now, if that was the service of a copy, it is bad, for the same reason as vitiated the previous service. It is however contended, that this was the service of a new original order. But if we were to hold that to be so, we should, as it seems to me, give to it an effect not intended by the justices who executed it; for if they had intended it as a new order, they would have given to it a date corresponding with the time of its execution. I think that they never could have intended it as a new order, they would have given to it a date corresponding with the time of its execution. I think that they never could have intended it as a new order, but only as an authenticated copy of their former order; and that the court of sessions were right in so treating it. In that view of the case, it is clear that both services are defective, and consequently that the appeal was in time, and the order of sessions is therefore right." Order of sessions confirmed.

7. *Of Suspending Orders of Removal.*

August, 1814, was served upon the appellants. The pauper was not removed till 1819, when an appeal was duly entered: Held, that the services of the original order of removal in 1814 and 1815 were both defective, and that the appeal was made in time, notwithstanding 49 Geo. 3, c. 124, s. 2.

8. OF FILING ORDER OF REMOVAL UNAPPEALED AGAINST.

As an order of removal, executed upon the parish to which it is directed, and which is unappealed against, is binding upon such parish as to the settlement of the pauper at that period, and may therefore become an important piece of evidence at some future period, the expediency of preserving the document itself in an authenticated form is obvious. Upon this subject there is a report as follows:—*Anonymous*, 1 *Salk.* 406. Per *Holt, C. J.* "The most regular way for justices to proceed upon the 14 Car. II. in removing a poor person, is to make a record of the complaint and adjudication, and upon that to make a warrant under their hands and seals to the churchwardens, to convey the persons to the parish to which they ought to be sent, and deliver in the record *per proprias manus* into court next sessions, to be kept there amongst the records, to charge the parish; and that record may be well removed by the general *certiorari* to the justices of the peace: Mr. *Broderick* said he had advised the justices in Surrey to do so." And upon this it is remarked in a former edition of *Burn's Justice*. (a) But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise that a removal was made in pursuance of such order; otherwise, how shall the parish be charged by an order which possibly they know nothing of, and consequently could have no opportunity to appeal against? It is there said to be usual in some places for the overseers who make the removal to bring the order to the next sessions, and there make oath that they removed the party in pursuance of such order, and if then there appeared to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless. But an order, not appealed against, is final without more; and as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth that the court (at the next sessions) may record thereupon that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth that unless it be upon appeal, they have no power to inquire concerning the removal, for that as to them is extra judicial: but the justices who

8. *Of Filing Order of Removal unappealed against.*

(a) See *Burn's Justice*, 16th edit. tit. "Poor."

8. *Of Filing
Order of Re-
moval unap-
pealed against.*

made the order have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded. [See the form of such a record, *post*, Appendix.]

To such record may be annexed the order of removal confirmed at the sessions on appeal, or not appealed against. And it may be proper to have duplicates, one filed at the sessions, and the other kept by the township. (See enactment of 3 & 4 Will. IV. c. 40, *ante*, 843, and *post*, Appendix.)

9. *Penalty and
Punishment for
not obeying Order
of Removal.*

9. PENALTY AND PUNISHMENT FOR NOT OBEYING ORDER OF REMOVAL.

It will be seen that by 3 W. & M. c. 11, s. 10 (*ante*, 822), a penalty of 5*l.* is inflicted upon churchwardens or overseers for refusing to receive a person sent to them by warrant of removal. Such refusal may be punished also by indictment, for the enactment does not apply to all cases.

Rex v. Davis, *Say*. 163; 1 *Bott*, 338. Indictment for refusing to receive a pauper sent by order of two justices to the liberty of the Tower. Plea, not guilty. Verdict against the defendant. It was moved in arrest of judgment that 3 Will. III. c. 11, having directed another method of punishment, to wit, a fine to be levied by warrant of distress in a summary way, that should be strictly pursued. *Denison*, J. "If a statute create a new offence, and give a punishment, that rule must be followed: but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute give another punishment, the prosecutor has his election. This was an offence before the 3 Will. III. Such a parish officer might have been indicted on the 13 & 14 Car. II. c. 12, or what would have become of a pauper in case of disobedience between the passing those acts; but the 3 Will. III. c. 11, does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment." *Foster*, J. "In all cases where a justice has power given him to make an order, and directs it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable." And judgment was given against the defendant. To which may be added, that the 13 & 14 Car. II. c. 12, requires in express words that such officer refusing *shall be bound over to the assizes or sessions, there to be indicted* (*ante*, 582).

4. *Of Persons
Returning after
Removal.*

4. *Of Persons Returning after Removal.*

If the person removed return of his own accord, without a certificate, the 13 and 14 Car. II. c. 12, s. 3, directs that he shall be punished as a vagabond. Upon this Lord Tenterden has remarked, in *Rex v. Barham* (8 B. & C. 99, *ante*, 668), that "it was insisted that the return of the pauper, after the removal, was an offence against the law; but since the 35 Geo. III. c. 101, this may admit of considerable doubt. Before that act, a person likely to become chargeable was removable, and if he returned after the removal, he returned in the same condition; but as that act renders a person irremovable, unless actually chargeable, he may after his removal return with the means of subsistence; and it is difficult to say that by so returning he commits an offence." This view sanctions the doubts expressed by Mr. Evans, in a note on 17 Geo. II. c. 3, and 5 Geo. IV. c. 83, s. 3, which enacts, that persons returning *and becoming chargeable* to the parish from whence they had been removed, shall be deemed idle persons.

Rex v. Angell, *Cas. Tem. Hardw.* 124; 2 *Bott*, 884. The justices of Berkshire held a petty sessions to search after vagrants, and a poor man, residing in the parish of Bingfield, being examined, confessed himself to be settled in the parish of Sunning, whereupon the justices ordered him to be removed to Sunning. On his return from Sunning without a certificate, the defendant, one of the justices present at the petty sessions, did, without any

Persons removed returning to the place removing from, must be charged therewith on oath.

summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this the court was moved to grant an information against the justice. The court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to Bingfield; but yet, as that was only a mistake of judgment, the court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclinable to grant an information; but as no malice appeared in the justice, the court allowed the prosecutor to accept of some proposal made by the justice to make him satisfaction.

Baldwin v. Blackmore, 1 Burr. 595. Baldwin and his wife were removed from Marsden to Banknewton. Afterwards they both of them returned to Marsden, without bringing a certificate; complaint of which being made in writing, and upon oath, to the defendant, a justice, he issued his warrant to bring them before him, who being brought and the facts fully proved upon oath, he committed them to the house of correction, *until they should be discharged from thence by due course of law*. Upon the trial of this cause, there was a verdict for the plaintiff, and 1s. damages, subject to the opinion of the court on two questions:—1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? On the argument of this cause, Lord Mansfield, C. J. desired to be informed how the usage had been about sending the wife to the house of correction with the husband: (though it would not indeed, as he observed, alter the law.) Afterwards, this case being mentioned as standing for the opinion of the court, it was said for the defendant, that he had several certificates of its being the practice for justices to commit the wife as well as the husband, for returning to the parish from whence they had been removed, although she so returned with her husband. Lord Mansfield, C. J. delivered the resolution of the court. He observed, “that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing him from suffering for what he had honestly done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case, and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded, though it doth not appear upon which the justice proceeded. The two acts are 13 & 14 Car. II. c. 12, (a law made before certificates under the late acts existed); and 17 Geo. II. c. 5, [which related to persons returning without bringing such a certificate, and is repealed by 3 Geo. IV. c. 40; see 5 Geo. IV. c. 83, s. 3, tit. *Vagrants*.] Now the warrant is not within the former of these acts; nor is the case itself within it. These persons did not go to any parish, carrying with them a certificate of their being inhabitants of their proper parish. The commitment is, *till discharged by due course of law*; whereas upon this act it should have been to the house of correction, *there to be punished as a vagabond*, or to a public workhouse, *there to be employed in work and labour*. Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month*: whereas this warrant is quite general: it is an indefinite commitment; not for a precise limited time, as the act directs. Therefore the warrant of commitment is totally illegal; and consequently the plaintiff is entitled to the damages that he has recovered.”

Rex v. Elere Cole, 2 Bott, 886. A motion was made to discharge a man out of custody, because 1st, the commitment does not state *to what place* the man returned; 2dly, nor that he returned without a certificate; 3dly,

4. Of Returning after Removal.

The warrant of commitment must be for a time definite.

The commitment must state to what place the pauper returned.

4. Of Returning after Removal.

Returning to reside on a tenement of the yearly value of 10*l.* : Held, to be right.

A conviction of the plaintiff for unlawfully returning, without a certificate, to a parish from which he had been removed, is a good answer to an action, though in fact he did not return in a state of pauperism.

that it did not appear that he had been before convicted as a vagrant, which prior conviction alone, under stat. 17 Geo. II. c. 5, gave a power of commitment for a month. The commitment was "for returning from the parish of St. Sepulchre's, after a legal warrant of removal from the parish of the Holy Trinity." Lord Mansfield. "This commitment cannot be supported; it does not say to what place he returned." Aston, J. "It is totally uncertain."

Rex v. Fillongley, 2 T. R. 709. The pauper returned to the parish from whence he had been removed, and resided upon a tenement of the yearly value of 10*l.* and upwards; the court said he had a right to return, for that an order of removal only prevents a return in a state of vagrancy.

Mann v. Davers, 3 B. & Ald. 103. Action for false imprisonment. Verdict for the plaintiff, 40*s.* damages. The defendant, who was a magistrate of Suffolk, committed the plaintiff to prison as an idle and disorderly person, under 17 Geo. II. c. 5. The defence was a regular recorded conviction of the plaintiff, and the information stated, that within three months the plaintiff unlawfully returned from the parish of A. to the parish of B., from which parish he had been removed to the said parish of A. by an order, &c. without bringing a certificate from the said parish of A. The conviction then stated, that plaintiff, being brought before the defendant, had confessed himself guilty of the offence. It appeared that when the plaintiff returned to the parish, he was not in a state of pauperism, but maintained himself by his own labour, and was actually taken up upon the charge upon which he was convicted when he was working in the harvest fields. The question was, whether the conviction was a bar to the action? Abbott, C. J. "This information pursues the language of the statute, and in so doing it does all that is necessary to be done. The returning to the parish without a certificate was at least *prima facie* evidence of his being an idle and disorderly person, and then it was for the defendant to show that he had a lawful excuse for returning. It would be extraordinary indeed if a person who refuses to answer, and suffers the magistrate to convict him, should afterwards be at liberty to bring an action against the magistrate; the defendant here confessed the substance of the charge, and when called upon for an excuse, he does not give one, but suffers imprisonment, in order that he may afterwards bring an action against the magistrate." Bayley, J. "The facts of the case induce a suspicion that it was one of considerable hardship on the party who had been removed. We must however consider the situation in which magistrates would be placed, if a party who neglected to make his defence when he had the opportunity could afterwards sue the magistrate. It seems that the parish officer had lodged before the magistrate a complaint, upon which, if established, the party was liable to punishment. The substance of the charge was, that he had returned unlawfully; if he could show any lawful excuse for his return, he might have stated that before the magistrate; he however confesses that he is guilty of the offence charged, upon which the law says that he is an idle and disorderly person, and I am of opinion that he cannot now turn round and bring an action against the magistrate." Holroyd, J. concurred. Best, J. "This conviction appears to be in the ordinary form; nevertheless I must say that the parish officer acted most improperly in taking a man up as a vagrant who was at work in the harvest field. But when he was before the magistrate, and alleged no fact to show that he was not, as he appeared to be, in a state of vagrancy, the magistrate could do nothing but convict him. Had he stated to the magistrate that he returned for the purpose of working, it would have been a question for the court whether the magistrate should not have used the language of this court in *Rex v. Fillongley*" (ante, 632.) Judgment for the defendant.

5. Order of Removal of one Certificated.

5. Order of Removal of one Certificated.

The nature of a certificate, and the provisions as to its form, delivery, and extent, are explained under the title *Acknowledgment of Settlement by Certificate* (ante, 773.)

It is provided by the 3 Geo. II. c. 29, s. 9, "That when any overseer or overseers of the poor of any parish or place, or other person, shall remove back any person or persons, or their families, residing in such parish or place, or sent thither by certificate, and becoming chargeable as aforesaid to the parish or place to which such person or persons shall belong, such overseers or other persons shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such person or persons, by the churchwardens or overseers of the poor of the parish or place to which such person or persons is or are removed, the said charges being first ascertained and allowed of by one or more of his majesty's justices of the peace for the county or place to which such removal shall be made; which said charges so ascertained and allowed, shall, in case of refusal of payment, be levied by distress and sale of the goods and chattels of the churchwardens and overseers of the poor of the parish or place to which such certificate person or persons is or are removed, by warrant or warrants under the hand and seal, or hands and seals of such justice or justices, returning the overplus, if any there be; which warrant or warrants he or they are hereby required to grant."

5. Order of Removal of one Certificated.

Overseers to be reimbursed on reconveying certificate persons.

There does not appear to have been any difficulty in understanding or carrying into effect the above provision, as the books present no cases upon its construction. It is probable that the only question which could arise, requiring the judgment of the superior court, would be, whether when a certificate person has been once removed back to the certifying parish, the latter has the power of sending him into the same parish from which he has been so removed again with a fresh certificate. There is nothing in the statute nor in the reason or policy of the law to prevent it. In many instances if the person finds it expedient to quit his own parish once more in search of employment, he will prefer to return to the place in which he has been before, as most likely to answer his purpose; and this is not likely to operate as a hardship upon the parish to which he so returns, as should he again become chargeable the expense of again removing him, and of his maintenance in the mean time, must be borne by the parish from which he is certificated.

Semble if justices discover that the order is not tenable, they may by fresh order supersede it, after which the Court of King's Bench would not compel them to give effect to the appeal. (*Rex v. Norfolk*, 1 Dowl. & Ry. 69; *Rex v. Lincolnshire*, 3 B. & C. 549; 5 D. & R. 347.)

VI. Appeal against an Order of Removal. (a)

The law relating to appeals has been classed as follows:—

1. *The Statutes relating to the Appeal.*
2. *Who may appeal, and to the Sessions of what Place.*
3. *Within what Time the Appeal must be made.*
4. *Entering Appeal after executed Order is superseded.*
5. *Of Adjournment.*
6. *Of Notice of Appeal.*
7. *Evidence.*

6. Appeal against an Order of Removal.

1. THE STATUTES RELATING TO APPEAL.

The 13 & 14 Car. II. c. 12, s. 2, enacts, "That all persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who are hereby required to do them justice according to the merits of their cause."

1. The Statutes relating to Appeal.

13 & 14 Car. 2, c. 12.
Power of appealing.

(a) As to the evidence, &c. on appeal, requiring costs of respite of appeal, see *ante*, 858, tit. *Examination*; and as to 1 B & Ad. 895.

1. Statutes relating to Appeal.

The appeal must be to the quarter sessions of the county from which the pauper is removed.

Overseers to have access to pauper: in cases of appeal.

2. Who may appeal, and to what Sessions.

The pauper may appeal as well as the parish.

And where an order directed the removal of paupers to the parish of L., and they were removed and delivered to a hamlet within the parish of a different name: Held, on appeal by such hamlet, that the respondents cannot object to a notice of appeal given in the name of such hamlet, they having delivered the pauper to the officers of such hamlet.

And 8 & 9 Will. III. c. 30, s. 6, enacts, "That the appeal against any order for the removal of any poor person from out of any parish, township, or place, shall be had, prosecuted, and determined at the general or quarter sessions of the peace for the county, division, or riding wherein the parish, township, or place from whence such poor person shall be removed, doth lie, and not elsewhere; any former law or statute to the contrary thereof in anywise notwithstanding."

We have already noticed the provision of the 4 & 5 W. IV. c. 76, which prohibits the removal of a pauper, where notice of appeal has been given within the twenty-one days. The same statute, by the 80th section, provides that in case of appeal the overseers shall have access to the pauper to examine him as to his settlement, and even if necessary to remove him out of the respondent parish; such removal however to be at the expense of the appellant parish. This statute further provides that the grounds of appeal shall be stated in the notice (*post*, *Notice of Appeal*), and enables the sessions to grant costs either of the appeal or of frivolous statements.

2. WHO MAY APPEAL, AND TO WHAT SESSIONS.

Rex v. Hartfield, Carr. 222; 2 *Bott*, 924. Two justices removed Nicholas Wells from Hartfield to Frampfield; from which order Wells, and not the parish, appealed. By the whole court: "The party may appeal as well as the parish." (See also *Rex v. Calcraft, post.*)

Rex v. Bishop's Wearmouth, 3 *Nev. & M.* 77; 5 *B. & Ad.* 942 (*ante*, 850). A township may appeal, although the order is directed to the parish.

Rex v. Carmarthenshire, 1 *Nev. & M.* 368; 4 *B. & Ad.* 563. Two justices, on the 25th of August, 1832, made an order for the removal of a pauper and her children from Mothvey to Llywell. The order was directed "To the churchwardens and overseers of the poor of the parish of Llywell," and after adjudging that the lawful settlement of the paupers was in the parish of Llywell, it proceeded in the usual form to require "the said churchwardens and overseers of the poor of the said parish of Llywell," to receive and provide for the paupers. The parish of Llywell is divided into three hamlets, viz. Treganmaur, Traganlaes, and Hydach, each of which maintains its own poor, and has separate churchwardens, separate overseers of the poor, and separate rates. Appeals have frequently been tried against orders of removal between the three hamlets, at the Brecon quarter sessions. There are no such officers as churchwardens or overseers for the whole parish of Llywell. On the 27th of August, 1832, the paupers named in the order of removal were delivered by an officer of the removing parish of Mothvey to one of the overseers of the hamlet of Treganmaur, together with the order of removal. The overseer received the paupers, but at the next quarter sessions held in October, 1832, an appeal against the order of removal was duly lodged and respited on behalf of the churchwardens and overseers of the hamlet of Treganmaur, and on the 22d of December, 1832, the following notice of appeal was duly served upon the churchwardens and overseers of Mothvey: "To the churchwardens and overseers of the poor of the parish of Mothvey, in the county of Carmarthen: This is to give you notice, that we the churchwardens and overseers of the poor of the hamlet of Treganmaur, in the parish of Llywell, in the county of Brecon, do intend at the next quarter sessions of the peace to be held in and for the said county of Carmarthen, to prosecute an appeal which was duly lodged at the last quarter sessions, against an order of, &c. for and concerning the removal of Jane Jones and her four children (describing them by their names, &c.) to our said hamlet of Treganmaur, in the said parish of Llywell, in the county of Brecon aforesaid, from your said parish of Mothvey, in the said county of Carmarthen." The appeal came on at the sessions held in January, 1833, and on proof of service of the notice of appeal, an objection was made on behalf of the respondent parish, that the notice was improper, inasmuch as it ought to have been given by the overseers of the parish of Llywell, to whom the order was directed, and not by the officers of the hamlet of Treganmaur; and a further objection was made,

that the notice stated the order to be an order for the removal of the paupers to the *hamlet* of Treganmaur, in the parish of Llywell, whereas the order appeared to be an order for their removal to the *parish* of Llywell. The justices at sessions determined against hearing the appeal, on the ground of the informality of the notice on the objections above stated, and the appeal was accordingly dismissed. A rule *nisi* for a *mandamus* to the justices to enter continuances, and hear the appeal, was afterwards obtained. *Denman, C. J.* "We are of opinion that the quarter sessions ought to have heard the appeal. The notice of appeal could not mislead the parish officers of Mothvey, to whom it was addressed. It recited the order of removal sufficiently; the names of the paupers, the removing parish, and the part of the parish of Llywell to which the removals were made under the order, although the order professed to remove to the parish at large. The parish of Mothvey is estopped by its own acts from availing itself of the objection. The removal was by the order to the parish at large; but the service of that order was on the hamlet. Parties who have thus acted upon their own order cannot afterwards say that an appeal against it under such a notice as this shall not be heard." *Littledale, Taunton, and Patteson, Js.* concurred. Rule absolute.

Any inhabitant may appeal. (*Rex v. Denbighshire, ante, 849.*)

Rex v. Wendover, 2 Salk. 490; 2 Bott, 953. Two justices of St. Alban's remove a person to Wendover. Wendover appeals to the sessions of St. Alban's. By the court: "The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non*

2. *Who may Appeal, &c.*

The appeal must be to the sessions for the county, and not of the corporation.

Rex v. Malden, Sett. & Rem. 10; 2 Bott, 959, n. By Lord Parker, C. J. "Where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions; for then there would be an appeal *ab eodem ad eundem*, there being it may be the same justices sitting who made the order."

Same point.

Rex v. East Donyland, Burr. S. C. 592; 2 Bott, 959. Two justices for the borough of Colchester removed the pauper from St. Giles's, in Colchester, to East Donyland, in Essex; and on appeal to the quarter sessions of the borough, the justices there confirmed the order, and stated a case. Upon arguing the matter there it was observed, that the appeal ought to have been to the county sessions. Unto which it was answered, that the parties having acquiesced in the jurisdiction, and entered upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. But by the court: "The borough sessions had no jurisdiction to make this order of confirmation, and, therefore, their opinion and their order are both nugatory. The appeal ought to have been to the quarter sessions of the county. As no such appeal has ever been made, the original order stands good, as unappealed from." And accordingly the original order was confirmed.

An appeal from an order of borough justices must be to the county justices. (a)

Rex v. The Justices of Carmarthen, 4 B. & Ald. 291. Two justices of the borough of Carmarthen, on the 23d of May, 1820, removed a pauper from St. Peter, in that borough, to New Church, in the county of Carmarthen. New Church appealed, and in their notice of appeal stated their intention of appealing to the next quarter sessions of the borough of Carmarthen. At the next sessions (which, it appeared, were the general, and not the quarter sessions) for the borough, held on the 21st September last, the parties accordingly attended, and applied for leave to lodge the appeal; but the magistrates refused the application. A rule *nisi* was obtained for a *mandamus*. It appeared from the affidavits that the borough of Carmarthen was a county of itself, and that by the charter there were annually elected six peers of the borough, who, with the mayor and recorder, were magistrates of the borough, and had the power twice in a year to hold a court of view of frank-

But by charter the magistrates of a borough may have jurisdiction. Where such place held only general sessions twice a year, and not quarter sessions: Held, that an appeal against an order of removal might be made to the next general sessions of the peace for such borough.

(a) *Quære*, construction of Municipal Corporation Act, 5 & 6 Will. IV. c. 76, s. 105. May the appeal of an order of removal be to the Recorder of a borough at his Court of Quarter Sessions?

2. *Who may Appeal, &c.*

pledge, and to summon the sessions of the peace within the borough, and to hold the sessions of the peace there, and to do all things relating to the sessions of the peace, according to the custom of England; and that in the said court they had full power to hear, execute, and determine upon all articles, misprisions, trespasses, and offences within the borough, which, according to law, belong to the court of view of frank-pledge, or to the office of justices of the peace in their quarter sessions, or otherwise to execute and determine. It also appeared, that the parish of St. Peter was co-extensive with the borough; but that three out of the eight magistrates did not reside in the parish. It was argued, that there is nothing in the charter enabling the magistrates to do acts relating to the poor laws at their general sessions. Lord Hale lays it down, that a general sessions is perfectly distinct from a quarter sessions. (a) By 13 & 14 Car. II. the appeal was given to the quarter sessions; but by 8 & 9 Will. III. altered to "general or quarter sessions." Here, too, there are only three justices who can sit to determine this appeal; for by 16 Geo. II. c. 18, all the rest are disqualified. And by 17 Geo. II. c. 38, it was provided, that in limited jurisdictions, where there are not four magistrates, the appeal must be to the county sessions. Abbott, C. J. said, "I am of opinion that the true construction of the 8 & 9 Will. III. c. 30, is, that if there be an appeal to the sessions of a town which is a county of itself, where by charter only general sessions are held, it must be made to the general sessions. Here, the magistrates are empowered to hear and determine upon all articles within the borough, which, according to law, belong to the office of justices of the peace in their quarter sessions, or otherwise, to determine. Now this is a very large expression, and comprehends, as it seems to me, a power to decide upon orders of removal. As to the other objection, it appears that there are three magistrates at least qualified to act, and a sessions of the peace may, it is known, be held before two magistrates. The act of parliament to which a reference has been made only applies to corporations or franchises, where there are not more than four justices altogether; and, besides, it does not apply to appeals against orders of removal. Upon the whole, therefore, I am of opinion, that this rule ought to be made absolute. (See *Rex v. Essex*, ante, 217.)

3. *Within what Time the Appeal must be made.*

Appeal must be to the next sessions.

It need not be within the 21 days after the order.

To be the next sessions after the removal.

Parties not aggrieved till after the removal.

The time limited for appealing against an order of removal is not suspended by the matter being referred to arbitration, if the award is not final.

3. WITHIN WHAT TIME THE APPEAL MUST BE MADE.

By 13 & 14 Car. II. the appeal must be to the next quarter sessions after the judgment.

We have seen before that the pauper cannot be removed until twenty-one days after the order has been sent to the overseers of the parish to which the removal has been made. It is not necessary, however, to give notice of appeal within that time. (*Rex v. Justices of Suffolk*, post, 888, "*Notice of Appeal*.")

Rex v. Norton, 2 Stra. 831. Exception was taken to an order of sessions, because the justices' order was dated June 21st, and the sessions' order was not till Michaelmas sessions. To this it was answered, that the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal; and for aught that appears, Michaelmas sessions might be the next sessions after the aggrievance. And so held in *Milbrooke v. St. John's*, in *Southampton*, M. 1 Geo. I. To which the court agreed, and the sessions' order was confirmed.

But now the appeal may be made before the removal actually takes place. (See s. 77 of 4 & 5 Will. IV. c. 76, Appendix.)

Rex v. Devonshire, J. Cald. 32; 2 Bott, 961. A *mandamus* had been moved for to hear an appeal to an order of removal: the sessions had refused to enter into it, as one sessions had intervened since the removal. The order was dated October 21st, 1776; in November the pauper was removed; some time afterwards it was agreed between the two parishes, that the question should be decided by an opinion, provided such opinion was given before the

(a) See also ante, 221.

14th day of January, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel than the examination of the pauper, which was, that he was born in Witheridge, and about the age of seven years was bound to Richard Elworthy, of Witheridge, with whom he lived till twenty-one, and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship. Elworthy gave him a discharge under his own hand: after different services he gained a settlement by hiring and service under Robert Salter, in Paddington, if he was so far discharged as to be capable of gaining a settlement by hiring and service. On the 10th of January the opinion was given; and was, "that if the indenture of apprenticeship remained in the master's hands *uncancelled* the apprenticeship still continued, and the agreement was no dissolution thereof, but only a licence to the apprentice to serve where he pleased." On this day the officers of Witheridge told the officers of Paddington, that as the opinion was not decisive, they must inquire of the master what had become of the indenture. At the sessions, on the 15th, no appeal was entered. At Easter sessions following Paddington appealed, but the justices refused to enter into it. A *mandamus* was moved for, on the ground that under the agreement the opinion in favour of Paddington was conclusive, and that Paddington had appealed in consequence of objections raised to this decision *subsequent to the Epiphany Sessions*, and therefore the statutory limitation of appeal to the *next* sessions ought, during the time the parties were under the terms of compromise, to be suspended: the court being satisfied of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany Sessions*. By Lord Mansfield, C. J. "As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus*. Upon the point of law, I am of opinion, that if the indenture had not been destroyed, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in Paddington. The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture: why should the master after this have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. But the opinion of the counsel was hypothetical only, and upon a state of facts at the time not settled and submitted to him by the parties. The case, therefore, might be considered as open to the interposition of the court. But the merits of the case appearing to be clearly against the party applying, the court, to prevent further litigation and expense, refused the rule; and on account of some misconduct with respect to the affidavits laid before the court by the prosecutors of the rule, directed that it should be discharged with costs out of pocket." *Mandamus* refused.

Rex v. The East Riding of Yorkshire, Doug. 192. The order had been made on the 22d of September, but the pauper was not removed till the 5th of October. Hull, the place to which the pauper had been removed from Whitby, is sixty miles from Northallerton, where the sessions began on the 6th of October; at which sessions no appeal was entered. At the Epiphany sessions Hull offered an appeal, but the justices refused to hear it. An appeal might have been entered at the Michaelmas sessions on the second or third day. The court said, that by *next* sessions the statute Car. II. must have meant the next *possible* sessions, and that here it was impossible for the appellants to lodge their appeal at the Michaelmas sessions. A *mandamus* granted.

Rex v. Justices of Esser, 1 B. & Ald. 210. Rule to show cause why a *mandamus* should not issue, commanding the justices to receive and hear an appeal against an order of removal from Tolleshunt Knights to Washbrook. The order was made on Tuesday, the 8th July, 1817, and was served about twelve o'clock on the following Saturday. The distance between the respondent and appellant parishes was twenty-four miles, and the appellant parish was thirty-seven miles from Chelmsford, where the sessions were held on the

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By *next* sessions is meant the *next possible* sessions.

An appeal to the next quarter sessions means the next practicable sessions.

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Tuesday following, and lasted four days: and by the practice of that sessions a motion to enter and respite the appeal might have been made at any time during the sessions. The parish not having appealed at the July sessions, the justices refused to receive the appeal at the Michaelmas sessions. Lord *Ellenborough*, C. J. "The 13 & 14 Car. II. certainly directs the appeal to be at the *next* quarter sessions, but that must mean the next practicable sessions. The parish officers must have a reasonable time allowed them to make the necessary inquiries, that they may judge of the propriety of appealing or not. The notice here is served on the Saturday. I am of opinion that they are not bound to devote Sunday to such a purpose. They have then only one entire day, *i. e.* the Monday, to get the necessary information, and to consider whether they will appeal or not; and that, in my judgment, is not sufficient. It has been said, that although the appeal could not have been heard at those sessions, still that it ought to have been entered and respited; but that would only be incurring an useless expense, without conferring any benefit on either party, and was, therefore, quite unnecessary." Rule absolute.

When it is not necessary to enter and respite.

Many of the earlier cases (*a*) had determined, that it was necessary to enter and respite an appeal at the next sessions, although there was not time to try it then; a more reasonable rule was laid down in *Rex v. The Justices of Devon* (8 B. & C. 640). The order of removal from Upottery to Petminster was served on the 8th of April. The sessions were held on the 15th (*b*) of April, at Exeter. Petminster is eight miles from Upottery, and thirty miles from Exeter. The sessions require eight clear days' notice to try an appeal. An appeal may be entered and respited without notice. The appeal was not entered at the Easter sessions, but at the July sessions, when they refused to hear it. Lord *Tenterden*, C. J. said, "It is clear that in this case the appellant could not have *tried* his appeal at the April sessions, but it was contended that he ought to have entered it then, and adjourned it.

(*a*) *Rex v. Herefordshire*, 3 T. R. 504. The order was made on Friday, the 18th of April; on the 19th the pauper was removed; on Tuesday, the 22d, the sessions was held at Hereford, twenty miles distant from the parish to which the pauper was removed; at which sessions it is the practice not to receive any appeal after the Tuesday morning. The parish not having appealed at those Easter sessions, the justices at the Midsummer sessions refused to receive the appeal. Lord *Kenyon*, C. J. "The words of the act of parliament are very strong, and they require the appeal to be made at the sessions next after the grievance. Where, indeed, an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered, by granting a *mandamus* to compel the justices at the following sessions to receive the appeal; because the words 'next sessions' mean 'the next possible sessions.' But this is a very different case; for there were two intervening days after the execution of the order, and before the Easter sessions; and if there were not sufficient time, before those sessions, to give reasonable notice of appeal, the appeal might have been then entered and adjourned, ac-

cording to 9 Geo. III. c. 7, s. 8." The other judges concurring—Rule discharged.

Rex v. The Justices of the West Riding of York, 4 M. & Sel. 327. An order of removal from a township in the West Riding to Saint Luke, in Middlesex, dated on the 3d of January, and executed on the 12th, and the Epiphany sessions for the West Riding were holden on the 18th. The parish of Saint Luke did not appeal to those sessions, but offered to appeal at the Easter sessions in April, when the justices refused to receive it. *Le Blanc*, J. (in the absence of the Chief Justice,) said, "We do not think that the parish were entitled strictly to pass over the first sessions; but if they had done at the second as much as they ought to have done, the court would have relieved them. The parish might possibly have gone, in the first instance, to the Epiphany sessions, but they have not done this, and have also not placed themselves in a situation to be heard at the second sessions; the court, therefore, do not see a sufficient ground for granting the *mandamus*." Rule discharged.

(*b*) The grounds of appeal must now be delivered *fourteen* days before the sessions. 4 & 5 Will. IV. c. 76, s. 81, *post*.

The entry for an adjournment only is an useless act, and only occasions unnecessary expense. I think, therefore, he was not bound to enter it at those sessions. One inconvenience only can follow from our holding that it is not necessary under such circumstances to enter the appeal at the first sessions, viz. where the removal is made within eight days of the sessions, so that the parish to which the pauper is removed, cannot try their appeal at those sessions, the removing parish may not know of the intention of the other parish to appeal till within eight days before the second sessions. If that should prove an inconvenience, the sessions may remedy it by requiring under such circumstances a longer notice." Rule absolute for a *mandamus*.

Rex v. The Justices of Kent, 8 B. & C. 639; 3 M. & R. 15. The order of removal from Lenham to Pluckley was served on the 8th April. The sessions were on the 15th at Maidstone; they require eight clear days' notice to try an appeal. The appeal was first entered at the July sessions; when the order was served, the officer of Pluckley said they should appeal. The officers of Lenham observed that nothing could be done at the April sessions, because there were not eight clear days. The sessions in July refused to hear it. Lord Tenterden, C. J. "We think it reasonable that the parish of Pluckley should have an opportunity of trying their appeal; they may probably have been misled by the observation of the officer of Lenham. Independently of that, it appears to me to have been wholly unnecessary to enter and adjourn the appeal at the first sessions, when they could not then try it." *Mandamus* granted.

Rex v. Southampton, 6 M. & Sel. 394. The order of removal from Ropley to Bentworth was made on the 2nd, and served on the 7th of January. The sessions were on the 14th at Winchester. Eight days' notice is necessary to have an appeal heard. Bentworth is five miles from Ropley, and fifteen from Winchester. The appeal was first entered at the Easter sessions, when they refused to hear it. Lord Ellenborough. "The order was made on the 2nd, and not served till the 7th. What prevented the order's being executed promptly? If it had been served immediately, the appellants might, for any thing that appears to the contrary, have gone to the first sessions and tried their case. The respondents having by their own act abridged the time, it seems reasonable that the appellants should be allowed to the next sessions, *nunc pro tunc*, for this purpose: for where delay has been caused by one party the most favourable construction should be adopted as regards the other." Abbott, J. "The effect of the delay was to prevent the appellants, if they had been so minded, from trying their appeal at the first sessions. Allowing that a satisfactory reason might be given for the delay, still the appellants ought not to be prejudiced by it." *Mandamus* granted.

Rex v. Surrey, 1 M. & Sel. 479. Order of removal from Richmond to Mortlake was dated the 11th of January, and executed in the afternoon of that day. The sessions for Surrey began on the 12th. The affidavit stated that there was not sufficient time to procure any information respecting the pauper, or the evidence to support an appeal; notice must be served of their intention to try such appeal, at least six clear days before the sessions. The sessions are always adjourned for a certain time, and appeals are allowed to be lodged at any time during the sitting of the sessions, or at the adjournment held next after the making such order, without requiring notice. The January sessions commenced on the 12th, and lasted fourteen days, when they were adjourned to the 2nd February, (which adjournment lasted one day,) and again adjourned to the 1st of March, which lasted two days. Newington, where the sessions were holden, was distant eight miles from Mortlake. Lord Ellenborough, C. J. "The statute does not contemplate the continuance of the sessions. It enacts that the party may appeal 'to the next quarter sessions,' without adding 'or some adjournment thereof.' It takes the holding of the sessions as the point of time to which it refers the appeal; and the sessions are always considered in law as one day, to whatever period they may by accidental causes be extended. The appellant parish ought to have a reasonable time allowed for considering whether they will appeal or not. The question is, whether the interval between the 11th

3. *Within what Time the Appeal must be made.*

Same point.

Same point.

Where an order of removal was made and executed the day before the holding the Epiphany sessions, and the parish gave due notice and entered at the Easter sessions, at which sessions the justices refused to hear the appeal, the court of K. B. granted a *mandamus* to the justices to receive such appeal.

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and 12th of January was a reasonable time for that purpose? We are of opinion that it was not." *Bayley, J.*, referred to *Rex v. Flintshire, Js.* Rule absolute.

See also second point on *Rex v. Carmarthen*, 4 B. & A. 291, ante, 883, 884.

4. *Entering Appeal after Executed Order is Superseded.*

Where an order of removal has been executed, and by consent of the removing parish, and the magistrates making it, it is superseded, and the paupers taken back, it is in the discretion of the sessions to enter an appeal against it or not, according as they may think justice requires it, in order to compel the respondents to pay the costs of maintenance, &c., incurred by the appellants before the order was superseded.

4. ENTERING APPEAL AFTER EXECUTED ORDER IS SUPERSEDED.

Rex v. The Justices of Norfolk, 5 B. & Ald. 484; 1 D. & R. 69; 1 D. & R. Mag. Ca. 17. A rule nisi was obtained for a mandamus to enter continuances and hear an appeal against an order of removal. The removal had taken place on the 22nd of August, and on the 5th of September notice of appeal was given. On the 10th of October, a supersedeas, under the hands and seals of the removing magistrates, was served on the officers of the appellant parish, stating, that doubts had been entertained, whether the order could be supported by legal evidence, and requiring them to deliver up the duplicate order to be cancelled, and also requiring the other party to take back the pauper. This was done at the instance of the respondents, the order having been founded on the examination of Edward George, taken under 59 Geo. III. c. 12, s. 28, and that, he being a prisoner convicted and under sentence for larceny, his examination was not evidence, he himself not being an admissible witness until the expiration of his sentence. It did not appear whether the costs of maintenance between the 22nd of August and the 10th of October had been tendered by the respondents. On the 17th of October, application was made to the sessions for leave to enter the appeal, which was refused, the court being of opinion that the order was at an end. *Pancras v. Rumbold* was cited as an authority to show, that though the justices may supersede an order before, they cannot do so after it is executed. *Bayley, J.* "This is a very different case from *Pancras v. Rumbold*, which is only an authority to show that the justices having been surprised into making an order, may of their own authority, and without the consent of the removing parish, supersede it before execution, but not after. But in this case, there is the consent of the removing parish. The language of Lord *Ellenborough* in *Rex v. Diddlebury* (post, 902,) puts it upon that very ground, for he says, 'There are two ways of getting rid of an order, one by consent of the parish in whose favour it is made to abandon it, the other by appeal;' and he adds afterwards, 'What objection can there be, as Lord *Mansfield* observed in *Rex v. Llanrhydd* (post, 901,) to a party's abandoning a judgment intended for his own benefit?' These observations show, that the consent of the removing parish alone is requisite. I think that in cases like this, the sessions may exercise a discretion, and enter the appeal or not, so as best to answer the purposes of justice. If the parties removing do not choose to pay the expenses of maintenance, incurred previously to the supersedeas, they may then enter the appeal, for the purpose of compelling them so to do. If they are willing to do it, the sessions may refuse to enter the appeal. Here the only object of entering it would be, either to obtain a decision from the sessions, in the absence of a material witness, or to respite the appeal from time to time. In the latter case, there would be an useless expense entailed upon the parties. As soon as George is discharged from prison a new order may be made; and it is better for the appellants that it should be so, for they will not be compelled to keep the family in the mean time. I think, therefore, that it was entirely in the discretion of the sessions to enter the appeal or not; and I do not see any ground why this court should interfere with their decision. This rule for a mandamus must be discharged." *Best, J.* "The principle upon which this court proceeds, in issuing the writ of mandamus, is to prevent a failure of justice. Here the very reverse would be the effect. For we should either compel the sessions to hear the case in the absence of the person who can give the most material information, or put the parties to the useless expense of obtaining respites from time to time, till his imprisonment be over." Rule discharged.

Where notice of appeal had been given for the first

Rex v. Monmouthshire, 1 Bar. & Ad. 895. An order having been made in August, 1830, for the removal of certain paupers from Aberystwith to

Merthyr Tydvil, notice of appeal was duly served on the 8th of October, for the sessions to be held at Usk, in Monmouthshire, on the 18th, such notice being sufficient according to the practice of the sessions. The parties attended at Usk on the 18th, and at a late hour of the day the appeal not having then been entered, the appellants moved to enter and adjourn it on an affidavit stating the absence of a material witness. The respondents, who had come prepared to try and had received no countermand, opposed the granting of the motion, unless they were paid their costs of the day. The appellants offered forty shillings, the costs usually awarded by the practice of the sessions to the party succeeding on an appeal. The respondents declined this, but proposed to refer the amount to the clerk of the peace, and the court refused to allow the appeal to be entered and respited unless the appellants should agree to pay the costs of the day, this being conformable to the practice of the sessions in cases where due notice had been given and not countermanded. The appellants would not consent, and the appeal was not entered. A rule was obtained calling on the justices to show cause why they should not enter continuances and hear the appeal. Lord Tenterden, C. J. "Entering the appeal is a mere nothing. The motion was to enter and adjourn. The justices consented to respite if the appellants would pay the costs of the day. That being declined, I think the justices exercised a very proper discretion in refusing the adjournment. The rule must be discharged." The rest of the court concurred. Rule discharged with costs.

4. *Entering Appeal after Executed Order is Superseded.*

sessions, it was held that the court were not bound to enter and respite the appeal, except on such terms for the payment of costs by the appellants as their rules required.

5. OF ADJOURNMENT. (See post, tit. "Judgment.")

Rex v. King's Langley, 2 Salk. 605; 1 Lord Raym. 481. Upon an appeal against an order of removal, the justices adjourned the appeal for further consideration. And it was held by the whole court, they may well adjourn an appeal upon debate for further consideration.

5. *Of Adjournment.*

Adjourning an appeal for further consideration.

Bodmin v. Warligen, 2 Bott, 982. On an appeal against an order of removal, the justices were divided, and the clerk of the peace made an entry that the appeal was lodged, and nothing done in it. And the court held, that under these circumstances, the clerk of the peace ought to have entered an adjournment.

Where justices are divided.

Where the sessions itself is adjourned, the style of the sessions ought not to run, *at such a sessions held by adjournment*, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment, as in *Rex v. Hinderclieve*, 19 Vin. Abr. 356; 2 Bott, 956. An order made at the general quarter sessions of the peace, *held by adjournment*, was quashed, because it did not appear that this was the next general quarter sessions; for it might be that the sessions was begun and continued by adjournment before the order was made.

Style of the sessions where they are adjourned.

Rex v. Heptonstall, Burr, S. C. 88; 2 Bott, 731. The sessions was said to be holden on such a day *by adjournment*, and it did not appear when the original sessions was holden. Order was quashed for that cause.

Rex v. Polstead, 2 Stra. 1263; 2 Bott, 986. Appeal was made to the sessions in Suffolk, held April 7th, 1766, against an order of removal. The sessions was adjourned to April 9th, at Woodbridge, where for want of a sufficient number of justices nothing could be done. April 11th, a sessions was held at Ipswich, and adjourned to the 14th, at Bury, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at Woodbridge. And of that opinion was the court; for the words in 2 Hen. V. c. 4, *and more often if need be*, were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The county must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed.

A quarter sessions once dropped cannot be resumed.

Rex v. West Torrington, Burr, S. C. 293. The sessions was held at Kirton; and from thence adjourned to Caistor, at which place no sessions was held pursuant to the said adjournment. Afterwards, a sessions was held

There must be an adjournment from place to place, where the sessions

5. *Of Adjournment.*

are held at different places.

Order confirmed at the sessions without hearing the appellants quashed by court of K. B.

at Horncastle; and the appeal was determined there. By the Court: "The sessions at Horncastle could not take up the appeal, for want of jurisdiction. A quarter sessions must be holden four times in a year, as directed by the statute; and it may be adjourned from time to time, and from place to place; but if it is once dropped, it cannot be resumed."

Road v. North Bradley, 2 *Stra.* 1168. A pauper was removed from Road to North Bradley. North Bradley gave notice of appeal; on which Road took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now Road insisted that the order was good, as not being appealed from at the next quarter sessions: and as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and, consequently, without jurisdiction; and at the same time quashed the latter part of the second sessions' order, that rescinded that confirmation, as not being properly before them.

6. *Of Notice of Appeal.*

9 Geo. 1, c. 7, s. 8. Reasonable notice is to be given of appeal.

The grounds of appeal must be delivered fourteen days before the sessions.

4 & 5 W. 4, c. 76, s. 81. Grounds of appeal to be stated in notice.

Parish losing appeal to pay such costs as court may direct.

6. OF NOTICE OF APPEAL.

By 9 Geo. I. c. 7, s. 8, "No appeal or appeals from any order or orders of removal of any poor person or persons whatsoever, from any parish or place to another, shall be proceeded upon in any court or quarter sessions, unless *reasonable notice* be given by the churchwardens or overseers of the poor of such parish or place who shall make such appeal, unto the churchwardens or overseers of the poor of such parish or place from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter sessions to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same."

But now overseers are required by the 4 & 5 Will. IV. c. 76, s. 81, (see Appendix) *fourteen days* before the sessions to give a statement of *the grounds of appeal*, and without it they cannot be heard, nor can they give evidence of any ground of appeal not there set forth in such statement. What is a sufficient statement will be seen by the following most important decisions, *post*, 891, 892.

4 & 5 Will. IV. c. 76, s. 81, "That after the 1st day of November, one thousand eight hundred and thirty-four, in every case where notice of appeal against such order shall be given, the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall with such notice, or fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal; and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid: provided always, that it shall not be lawful for the respondent or appellant parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal, or of appeal against any order of removal, than those set forth in such respective order, examination, or statement as aforesaid."

Sect. 82. "That upon every such appeal the court before whom the same shall be brought shall and may, if they think fit, order and direct the parish against which the same shall be decided to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof; and in case the overseers of the poor of the parish liable to pay the same, shall upon demand, and upon the production of such certificate, refuse or neglect to pay the same, the amount thereof may be recovered from

such overseer in the same manner as any penalties or forfeitures are by this act recoverable."

Sect. 83. "That if either of the parties shall have included in the order or statement sent as hereinbefore directed any grounds of removal or of appeal, which shall in the opinion of the justices determining the appeal be frivolous and vexatious, such party shall be liable, at the discretion of the said justices, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered in the manner hereinbefore directed as to the other costs incurred by reason of such appeal."

Rex v. Suffolk, 5 Nev. & Man. 503. A rule nisi had been obtained for a *mandamus* commanding the justices to enter continuances and hear the appeal of the overseers of Manningtree against an order for the removal of a pauper from the parish of St. Margaret, in Ipswich, to Manningtree. The affidavits disclosed these facts: 17th September, 1835, the order of removal was made, a copy of which, together with a copy of the examinations, and a notice of chargeability was on the following day transmitted to the overseers of Manningtree; 9th of October, the overseers of Manningtree sent to the officers of the removing parish a notice of appeal for the next general quarter sessions to be holden for the borough of Ipswich, accompanied with a statement of the grounds of appeal; 13th October, the overseers of Manningtree discovering that they had erroneously given notice of appeal to the borough sessions, sent to the officers of the removing parish a notice of appeal for the next general quarter sessions to be holden for the county of Suffolk, and referred to the statement of the grounds of appeal sent with the former notice. By the practice and rules of the Suffolk quarter sessions eight days notice of appeal is sufficient. 23d October, the county sessions commenced, and the justices considering, that notwithstanding the practice of the sessions, notice of appeal ought under the Poor Law Amendment Act (4 & 5 Will. IV. c. 76), to have been given within twenty-one days from the time of sending the notice of chargeability, &c., and that the notice of the 9th October was a nullity, refused to hear the appeal. Lord Denman, C. J. "I think that by this act it was not intended to interfere with the practice of the sessions. Such an intention, if it had been entertained, would have been expressed in plain terms. It appears to me therefore that the practice as to notices of appeal must stand exactly as it did before the act passed. The act requires that a statement of the grounds of appeal shall be given with the notice, or at least fourteen days before the commencement of the sessions. It appears to me that this was done on the 9th October, for that though the notice of appeal which accompanied the statement was a notice to the wrong sessions, yet the statement of the grounds of appeal was available to all purposes. As therefore the notice was in due time according to the practice of the sessions, and the statement of the grounds of appeal was sufficiently early under the act of parliament, the sessions ought to have entertained the appeal." Patteson, J. "The notice on the 9th of October stated the grounds of appeal. That is a compliance with the act. If it be an absurdity that the statement of the grounds of appeal is required to be given earlier than the notice need be given, then it is an absurdity introduced by the act of parliament itself." Williams, J. "The only novelty introduced by the 79th section of the act is, that the pauper shall not be actually removed within twenty-one days, unless with consent, nor if there be a notice of appeal within that period, until the time for prosecuting the appeal has expired, or the appeal has been heard and determined. That is the only change effected by that section. And the novelty introduced by the 81st section is, that a statement of the grounds of appeal must be sent or delivered to the respondent parish at least fourteen days before the sessions. That has been effectively done here. Whether timely notice of appeal was given depends upon the practice of these particular sessions, which stands as it did before the passing of the poor law amendment act." Coleridge, J. "It is admitted that there was no notice within the twenty-one days, therefore if Mr. Andrews is right in his argument, that the 79th section imperatively requires every notice of appeal to be given within the twenty-one days, the sessions have acted properly in refusing to entertain

6. Of Notice of Appeal.

Party making frivolous and vexatious statement to pay costs.

Under 79 sect. of Poor Law Amendment Act, notice of appeal against an order of removal need not be given within twenty one days from the time of sending the notice of chargeability and the copies of the order and examination to the overseers of the parish charged by such order: Held, that the practice as to notices of appeal not being expressly altered by the act remains as before, although s. 81 requires the statement of the grounds of appeal to be delivered with such notice at least fourteen days before the sessions.

6. *Of Notice of Appeal.*

the appeal. The words of the statute do not in my opinion require the notice of appeal to be given within the twenty-one days. I think it quite clear that it was never intended to go that length. The mischief intended to be provided against, was the immediate removal of paupers. Paupers were *de facto* removed immediately upon the making of the order of removal, without previous communication with the parish charged by the order, and without giving any time for investigating the removal. The intention was only to prevent a removal within twenty-one days. The words of the act are only that the pauper shall not be 'removed, or removeable, &c.' It does not say that there shall be no appeal, unless a notice of the intention to appeal be given within twenty-one days. If this had been intended the obvious course would have been to have inserted plain words to that effect. Then with regard to the 81st section. We are called upon to make a general alteration in the practice of all the courts of quarter sessions in the kingdom, upon the ground of a mere implication arising out of a supposition that some absurdity will be introduced if the practice be not so altered. The section does not say that the notice shall be given fourteen days before the sessions or at any particular time. I think that the obvious meaning of the act is, that where any greater time than fourteen days is required by the sessions for the notice of appeal, then you may deliver the statement of grounds with your notice, or if not, that you should deliver the statement of grounds at least fourteen days before the sessions. If any practical absurdity does arise out of this enactment, it is one which we cannot remedy." Rule absolute.

A notice of appeal stating that the paupers were settled in the respondent parish, is a sufficient statement of the ground of appeal.

Rex v. Justices of Cornwall, K. B. Trin. Term, A. D. 1836. The overseers of the parish of St. Gluvias, in Cornwall, gave notice to the overseers of the parish of Penryn, in the same county, dated 21st March, 1826, that they intended at the next general quarter sessions for the county to prosecute an appeal against an order of two justices for and concerning the removal of Charles Halooso and Charlotte his wife, and William, Asinath, and Emily, son and daughters of the said Charlotte by a former husband, from Penryn to St. Gluvias, and that the grounds and reasons of the said appeal are that the said Charles Halooso was not bound an apprentice, (taking different objections to the removal of Halooso,) and also that the said William, Asinath, and Emily, the son and daughters of the said Charlotte, the wife of the said Charles Halooso, by a former husband, are and each of them *is now settled in the said borough of Penryn, &c.* The order of removal stated that Halooso, and Charlotte his wife, and William, now aged about 12 years, Asinath, now aged about 11 years, and Emily, now aged about seven years, son and daughters of the said Charlotte by a former husband, neither of which said children hath gained a settlement in his or her own right, have come to inhabit in the said borough of Penryn, that Halooso and his wife had not gained a settlement there nor produced a certificate, and that the father had become actually chargeable to Penryn, and adjudged that the lawful settlement of Halooso and his wife was in St. Gluvias, and ordered the removal of the said Charles Halooso and Charlotte his wife, and William, and Asinath, and Emily, her children, as part of the family of the said Charles Halooso, from Penryn to Gluvias. By the examination of Charlotte Halooso before the justices, it appeared that her former husband belonged to the said borough, and that neither of the three children had done any act to gain a settlement in his or her own right, that the said children were living with Charlotte Halooso and her present husband. When the appeal came on to be heard, the sessions received the evidence respecting the settlement of Charles Halooso, but refused to hear any evidence against the removal of the children, except so far as depended upon the settlement of Charles Halooso, on the ground that it was not stated in the appeal how the children were settled in Penryn, and removal was confirmed. Lord Denman, C. J. "This rule must be made absolute. The sessions have refused to hear a case, raising an important point, because the notice does not state how the children were settled in the respondent parish. Sir W. W. Follett contends that the notice must be construed with reference to the order and examination, and that in connection with them it has full information. Without settling the question on that

ground, we think it better to state that we think the notice sufficient in itself. The appellants say that they mean to dispute the order on the ground of the children being settled in another parish. That is sufficient to draw the attention of the respondents to the settlement there." *Littledale, J.* "I think this notice sufficient. Under the old law it was sufficient to give notice of appeal without stating the grounds. Such a statement is now made necessary. Formerly there might be doubt as to the nature of the case to be set up, but now a notice like the present confines the party giving it to proof of a settlement in the parish named and is a compliance with the provisions of the act." *Patteson and Williams, Js.* concurred. Rule absolute. (a)

The court of sessions have a right to make rules to fix the time when notice of appeal shall be given, (see *Rex v. Justices of Devon, ante*, 886.) In some counties fourteen days' notice is required, in others eight days; in others, it is to be given on or before the Monday in the week next before the sessions. Hence it was necessary in each case to inquire into the practice of each quarter sessions.

Rex v. J. of Huntingdonshire, Cald. 283; 2 *Bott*, 948. Upon a removal of a pauper, the notice of appeal was served upon a Sunday: had the appellants deferred the service of their notice till another day, they would not have been in time, under the practice established in that court, to have given reasonable notice for the purpose of trying the merits. The sessions (being of opinion that the party aggrieved was not at any rate, or for any purpose entitled to appeal, unless the prescribed notice had previously been given; and also that a service of a notice on a Sunday was not a legal service, and that in point of law there had not been any notice,) refused to hear, adjourn, or enter the appeal. A rule was obtained for *mandamus* to receive and hear the appeal, and no cause being shown was made absolute.

Rex v. J. of Gloucestershire, Doug. 191; 2 *Bott*, 727. On application for a *mandamus* to receive an appeal, it appeared from the affidavits, that the examination of the pauper was taken in August, the order of removal the 12th of November following, and the sessions were held on the 12th of January in the ensuing year: that no notice of appeal had been served (for which the reason assigned was that the appellants had not been able to get their witnesses ready till it was too late to give such notice), that the court had been moved to receive the appeal, and adjourn the consideration of it till the following sessions, and had refused. The court were clearly of opinion, that the justices ought to have received the appeal, and the rule for a *mandamus* was made absolute.

Rex v. J. of Bucks, 3 East, 343. It was determined, that where notice had been given, and if upon an appeal lodged against the order of removal, the sessions were of opinion that reasonable notice had not been given by the appellant to the respondent parish, they could not dismiss the appeal on the ground that notice might have been given in time, but were bound by the direction of the stat. 9 Geo. I. c. 7, s. 8, to adjourn the appeal to the next sessions. (N. B. This case overruled that of *Rex v. Yorkshire, 3 T. R.* 150, but see the reason given in that case for the refusal and the observations of Lord Tenterden, *Rex v. Wiltshire, 8 B. & C.* 380; 2 *M. & R.* 401; *post*, 894.)

Rex v. J. of Shropshire, (erroneously reported *Rex v. J. of Staffordshire, 7 East*, 549.) An appeal was lodged at the next sessions after an order of removal made, and was moved to be adjourned, on the part of the appellants, no notice having been given to the respondents; but the sessions being of opinion there had been sufficient time for the appellants to have given notice of such, after the order had been executed, and before the holding of the sessions, dismissed the appeal. Whereupon a rule was obtained for a *mandamus* to enter a continuance to the next sessions, and hear the appeal. No opposition was made; it was considered (b) that *Rex v. J. of the North Riding of*

6. Of Notice of Appeal.

Appeal to be adjourned if not sufficient notice.

Sessions are bound to receive an appeal, although no notice has been given.

The justices are bound to receive an appeal against an order of removal if offered at the next sessions, although no notice has been given.

It is imperative upon the sessions to enter and adjourn the appeal where no notice has been given to the respondents.

(a) We are indebted to the kindness of Mr. Ellis for this report.

(b) In that case, reported 3 *T. R.* 150, an order was made on the 26th of November, and executed on the 28th. It appeared that the appellants attended at

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Justices ought not to enter and adjourn an appeal, if there has been notice for trying it.

The sessions have power to judge of the reasonableness of the notice; but the Court of K. B. has a visitatorial jurisdiction. (a)

Yorkshire had been over-ruled by *Rex v. J. of Bucks.* Lord Ellenborough, C. J. said, that "the latter case had been well considered, and that the court were satisfied that the statute was compulsory on the sessions in these cases to receive and adjourn the appeal." Rule absolute.

In *Rex v. Wiltshire* (*ante*, 221), Lord Tenterden, C. J. said, "It appears to me, upon the sound construction of 17 Geo. II. c. 38, s. 4, that where there is time, between the allowance of the rate and the next sessions, for a reasonable notice of appeal to be given, and no notice is given, the justices not only may, but ought to reject the appeal, and not suffer it to be entered at all. But where they do suffer it to be entered, I think they have most clearly the power of adjourning or respiting it; for such a power is incident to their character as a court of justice." (And see *Rex v. Justices of Monmouth*, 1 B. & Ad. 895 (*ante*, 888).

Rex v. J. of Wiltshire, 10 East, 404. This was an application for a mandamus to enter continuances upon the appeal of Stourton against an order of removal from Mere, in Wiltshire, and to hear the appeal. By an affidavit of the appellant's attorney, living at Wincaunton in Somerset, it appeared that he was applied to by the officers of S. on the 19th of April last, to enter the appeal and get it respited until the next sessions, in consequence of which notice of appeal, and of the intended motion to respite, was given to the respondents; the next sessions was held on the 26th of April, when the appeal was entered and respited to the Midsummer sessions, which was held at Warminster on the 12th of July; on the 2nd of July the appellant's attorney learnt, for the first time, that the sessions had made certain rules for their practice, which were not published till after the April sessions, nor acted upon, nor officially circulated, till the Midsummer sessions, by which it was required that, on all trials of appeals, the notice of trial was to be given on or before the Monday in the week next before the sessions, otherwise the notice to be deemed insufficient, and that the like notice was to be given in the case of respited appeals, unless, &c. On Tuesday, the 5th of July, notice of trial of the appeal was served on the respondents, at six o'clock in the morning, dated the day before, being as soon as the signatures of the parish officers could be obtained. The usual notice theretofore required in such cases, in this and the neighbouring counties, was given in this case. The appeal was called on, when the respondents objected that the notice had not been given in time. The appellants then applied for an adjournment under the circumstances, offering to pay the costs of the day; but the court refused it, thinking they had no power to do so. Affidavits were read in answer, alleging that the new order of practice was made at the preceding January sessions, held at Devizes; and that notice of it was immediately after promulgated in the county; that the appellant's attorney lived only five miles from S., though in the county of Somerset; and that the litigating parishes were very near to each other. Lord Ellenborough,

the next sessions, held on the 13th of January, and moved the court for leave to lodge the appeal, and to respite the hearing thereof to the next sessions. The following entry was made by the sessions: "Forasmuch as it appears to this court that there has been sufficient time since the removal of the paupers for the appellants to give notice and come prepared to try this appeal at this sessions, and no cause shown why they did not proceed accordingly, it is ordered that the motion for lodging the same, and respiting the hearing to the next quarter sessions, be rejected." The court were of opinion that the justices had not acted wrong; for the motion was in effect to adjourn the appeal. And it was evi-

dently the intention of the parties not to enter the appeal, unless the court would adjourn it. The justices are to judge of the reasonableness of the time; and in some counties they establish a rule regulating the time of notice. Here it appears that the order of removal was executed on the 28th of November; so that there was sufficient time for the appellants to give notice and to come prepared to try it; and the justices, who are the judges of this, thought so. Rule for mandamus discharged.

(a) It is not correct to say this court sets its discretion against that of the sessions. *Parke, J.*, 5 B. & Ad. 671; *Rex v. Yorkshire, J.*

C. J. "The magistrates certainly had a discretion to exercise with respect to what was reasonable time for giving the notice of appeal; but we have also a kind of visitatorial jurisdiction over them, in the exercise of such discretionary power; and we think that in this case they have not exercised that discretion in a way that we ought to give effect to; but that we ought to interfere and correct it. Here it appeared that a new rule of practice, with respect to giving notice, had been recently made by the sessions, of which the appellant's attorney had no knowledge, but he conformed himself to the former practice; and, under these circumstances, it would be too much to conclude the appellants from having their case heard." Rule absolute. [Though by 13 & 14 Car. II. c. 13, the appeal was to be lodged at the next quarter sessions, yet when it was so lodged, the justices might have adjourned it *toties quoties* the purpose of justice required. *Vide Rex v. Lumley*, 2 Salk. 605. And there is nothing in 9 Geo. I. to restrain their general power in this respect, but rather to compel the adjournment, if the first notice has not been given.]—(Mr. East's note.)

Rex v. Monmouthshire, 3 Dowl. P. C. 306. Talbot had obtained a rule, calling upon the justices of Monmouthshire to show cause why a *mandamus* should not issue, commanding them to enter continuances and hear an appeal. By an order of removal, dated May 28th, 1834, a pauper was removed from the parish of Bedwellty, in the county of Monmouth, to the hamlet of Rhyndwyclydach Lower, in the county of Glamorgan. At the following sessions, which were held at Usk on the 30th of June, an appeal against the said order was entered and respited in the usual manner by the agents for the attorney for the appellants, and who had received a letter from him, directing them so to enter and respite the appeal. No notice was given to the respondents previous to such entry and respite; but on the 30th of September following the agents received a letter, inclosing a notice of appeal, which notice was forwarded by them, by the same day's post, to the attorney for the respondents. By the practice of the Monmouthshire sessions, eight days notice is required in common appeals, and fourteen days notice in respited appeals. The Michaelmas sessions were held at Usk on the 14th of October; it was therefore admitted that the notice of appeal was served too late, in consequence of which notice was given by the appellants to the respondents, that they should move to adjourn the appeal at the ensuing sessions. Accordingly at those sessions the appellants did so move; when the court, exclusive of the chairman, being equally divided in opinion, he gave the casting vote against the appeal being adjourned. Mr. Jenkins, the attorney for the appellants, stated in his affidavit that he was wholly ignorant of the practice of the Monmouthshire sessions, never having tried an appeal at them; and that he never heard that fourteen days notice of appeal, in case of adjourned appeals, was necessary, until he was so informed by a letter, dated the 30th of September, from his agents. The affidavit against the rule stated that Messrs. M'Donnell and Moslyn had been in practice for many years at Usk, where the sessions were always held, and were well acquainted with the practice of those sessions. Patteson, J. "The question here is, to what extent the court will interfere with the jurisdiction, and with the exercise of the discretion of the sessions. Though a doubt was raised last term, whether the 9 Geo. I. c. 7, s. 8, applied to a subsequent sessions, I take it to be a settled rule, at least I always thought so, that it only applied to the first sessions. The extent to which the court will interfere with the sessions is a matter that I do not like to determine at once. In *Rex v. Wilts* (*ante*, 894), the judges seem to have gone a long way; but in *Rex v. W. R. Yorkshire*, Parke, J. stated that he did not approve of the observations in that case, that the sessions were judges of what was reasonable notice. Now if the court, in the case of *Rex v. Wilts*, means only that we might interfere where there is no rule, it is quite right: if it means that we are to interfere in all cases where there is an existing rule, I should have considerable doubt." *Cur. adv. vult.* Patteson, J. "I have considered this case; I think it seems to have been agreed on both sides that the 9 Geo. I. c. 7, s. 8, does not apply to the present case; that section unquestionably applies

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The 9 Geo. I. c. 7, s. 8, only applies to the first sessions after executing the order of removal; and therefore the court will not interfere with the discretion of the magistrates at the second as to adjournment, if it is in furtherance of a reasonable practice.

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only to the first sessions; and that section gives no jurisdiction further than this, whether the notice is a reasonable notice or not: but it goes on to say, that, if it is not a reasonable notice, then the justices are to adjourn the appeal. They *must* adjourn it. In this case there was no notice at the first sessions, therefore the statute was entirely out of the question. The whole matter, therefore, depends on whether this court can interfere where the magistrates have laid down a rule, and have chosen to act upon the rule. *Rex v. Wilts* has been a good deal relied upon. That case is certainly one in which some of the expressions have been, I will not say found fault with, but cautiously abstained from in later cases, because the judges thought they went too far; that case proceeded entirely on this, that there was a new practice only existing for two sessions, doing away with the former practice, and the attorney had acted in ignorance of that practice, and the court thought that the sessions had acted wrongly. How far there would be a similar decision now may be doubtful. But this case is not like that. Here there is no suggestion that the practice is a new practice; and I cannot say that that practice is an illegal practice. The practice requires eight days' notice of an original appeal, and fourteen days' notice of an adjourned appeal: why more should be required in the latter case than in the former I do not see." [Greaves, Counsel, "It is founded on this ground, that the respondents may naturally expect to have an appeal at the first sessions after the order, and therefore eight days' notice will be sufficient; but if the appellants pass by the first sessions, the respondents will be lulled into security, and therefore are fairly entitled to a longer notice at the second sessions."] Patteson, J. "I suppose that may be so. There is nothing illegal in it. There is nothing so absurd in it as to require us to lay it down that it is not good. If the sessions have thought fit to lay it down, they may abide by it. It was for the sessions to determine whether they would adjourn. The sessions seem to have differed in opinion, but that is immaterial. It was in the exercise of their discretion whether they would adjourn. It was purely a matter of discretion. Undoubtedly, there was no great hardship on the attorney; he was a stranger, but he ought to have informed himself of the practice of the sessions where the case was to come on. Mr. Talbot relied on *Rex v. W. R. Yorkshire*. There there was a special act, allowing an appeal upon giving ten days' notice of appeal, and nothing was said about that appeal, supposing it to be adjourned. The sessions refused to adjourn; and this court said that the sessions were wrong, because there was no practice, which there could not be, as to that appeal. There was no general practice brought to the notice of the court, and therefore they held that the sessions had acted wrongly in refusing to hear the appeal, there being nothing at all to show that the party desirous of appealing was to give a notice at the second sessions. Here there is a distinct practice of requiring such a notice." Rule discharged, with costs.

Mandamus to enter continuances, and hear appeal when too long. Notice of appeal required by practice of sessions fourteen days.

Rex v. Lancashire, J., 7 B. & C. 691. On an application for a *mandamus* to enter continuances, and hear an appeal, the attorney for the appellant stated in his affidavit that the order was removed, and his instructions given too late to try his appeal at the July sessions in 1827. It was lodged and respited then. On the 8th of October he gave notice of appeal to the sessions held October 22nd. By a rule of sessions made in 1816, fourteen days' notice, *exclusive of the day of notice and the day of holding*, was required. The attorney thought that the fourteen days were to be calculated one exclusive, and the other inclusive. Lord Tenterden, C. J. "We think that justice will be most satisfactorily administered by ordering the justices to enter continuances, and hear this appeal. They certainly have a discretionary power to make rules for the governance of the practice of the sessions, but the case cited (*Rex v. Wiltshire, J. ante*, 894,) shows that this court, for the purposes of justice, will interfere to control that discretion." *Mandamus* granted.

No notice of appeal is required where the respite takes place at the

Rex v. Lindsey, 6 M. & Sel. 379. An order of removal from Messingham to Tickhill was made on the 7th of January, 1817. On the 11th, Tickhill gave notice of appeal. At the sessions the respondents moved to adjourn the

appeal, on account of the absence of a witness, and it was adjourned. At the following sessions the respondents objected that no notice of appeal for that sessions had been given; and the order was confirmed without a hearing. By the rules of the sessions in all cases of appeal, not otherwise directed by law, ten days' notice in writing is required, and in case of respited appeals the like notice is given, unless the parties agree to the contrary. Lord *Ellenborough*, "The appeal was adjourned at the instance of the respondents, who now require notice; but have they not, in effect, had notice? the object of giving notice is to inform a person of that which he may, otherwise, remain ignorant; but a person cannot be supposed to be ignorant of that which is done at his own request, and for his own convenience." *Bayley, J.* "The practice of the sessions does not apply to this case, but only to the common case of entry and respiting an appeal. In many cases parties enter and respite an appeal as a matter of course, not having satisfied themselves of all the facts of the case. But here the appellants were ready and in condition to try, and but for the application of the respondents, would have tried their appeal. Then the respondents desire to respite it, which is, in effect, an agreement that they will be ready at the next sessions to try it without notice."

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instance of the respondents.

Rex v. Gloucestershire, 3 Dowl. 298. Justice showed cause against a rule nisi obtained by *Greaves* for a *mandamus* to be directed to the justices of Gloucestershire, commanding them to enter continuances, and hear an appeal against an order for the removal of a pauper. The facts disclosed in the affidavits on both sides were in substance as follows:—The order of removal was made in March, 1834, and regular notice of appeal was given for the Easter sessions. At those sessions, upon the application of the appellants, the appeal was adjourned, upon an affidavit of the illness of a material witness for the appellants, after the court had heard counsel on both sides, the appellants paying the costs of the day. A second notice of appeal was given for the July sessions, which was too late by two days, if the rules of the sessions applied to this case. Those rules required notice on all trials of appeal to be given on or before the Thursday in the week next before the sessions; and the like notice in the case of respited appeals. Another rule required the appellants to produce the pauper, on the trial of the appeal, or the order would be confirmed. Within a few days of the July sessions the pauper was confined, and thereby rendered incapable of being produced at those sessions; in consequence of which the appellants, on an affidavit of these facts, moved to adjourn the appeal again, when it was objected that the appellants could not be heard; first, on the ground that the notice was too short; and, secondly, on the ground that the pauper was not produced. The sessions refused to adjourn the appeal, and confirmed the order. *Cur. adv. vult.* *Littledale, J.* afterwards sent an intimation to the crown office, that he was of opinion that the rule for the *mandamus* ought to be made absolute; but giving no other reason than "I thought the notice sufficient." Rule absolute.

If a regular notice of appeal has been given for one sessions, and the appeal be adjourned at the instance of the appellants, after hearing counsel on both sides, it is not necessary to give a strictly regular notice of trial for the following sessions.

7. OF EVIDENCE.

By 54 Geo. III. c. 170, s. 9, "No inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall on such account be deemed an incompetent witness for or against such district, parish, &c. in any matter relating to such rates or cesses, or relating to any order of removal, or the settlement of any pauper, or touching any bastards chargeable or likely to become chargeable to such district, parish, township, or hamlet, or the recovery of any sum or sums for the charges or maintenance of such bastards, or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers of any such district, parish, township, or hamlet; any law, &c. notwithstanding." So that in parish appeals or other

7. *Of Evidence.*

54 Geo. 3, c. 170, s. 9, rated inhabitants and parish officers declared to be competent.

7. Of Evidence.

Decisions thereon.

proceedings relating to parish matters, all objections to the competency of any witness, on the score of *interest*, or by executing any office, are removed.

There is a similar provision in 4 & 5 Will. IV. c. 76. s. 100. See Appendix.

See the decisions on this act in *Meredith v. Gilpin*, 6 Price, 146; and see also 1 B. & Ald. 87; 2 Stark. R. 215; *Rex v. Hayman*, M. & M. 401; *Marsden v. Stansfield*, 7 B. & C. 815; 1 M. & R. 669; and *Rex v. Bishop's Auckland*, 1 A. & E. 744.

In *Slocomb v. St. John*, 29th August, 1829, on an issue to try whether the parish of Putney were to appoint both churchwardens, or whether the minister, by custom, is to appoint one, Sir J. A. Park held, that a rated inhabitant of the parish is a competent witness to prove that the parish elects both churchwardens, saying, that the principal object of the act, on the face of it, appears to relate to the poor, yet the words "election or appointment of officers" are very general.

In *Oxenden v. Palmer* it was held, that an inhabitant of a parish is not, either at common law or under this act, a competent witness to prove the right of surveyors of highways in a parish to take beach from the sea shore in order to repair highways.

A witness in a settlement case having admitted that he had rateable property in the township, which was at that time *prima facie* a disqualification, was allowed to prove on the *voire dire* that he was not actually rated. (a)

A pauper competent to prove his own settlement, and his master not.

A pauper is a competent witness, and may be examined as to the fact whether he had ever gained a settlement, or whether there was a reasonable ground to conclude that he had gained a settlement in the appellant parish by apprenticeship or otherwise. *Per Bayley, J.* in *Rex v. Yarwell*, 9 B. & C. 895; 4 M. & R. 685; and *per Ashhurst, J.* in *Rex v. Eriswell*, 3 T. R. 720.

A rated inhabitant is to be considered as a party to an appeal between his parish and another touching the settlement of a pauper, and cannot be compelled to give evidence against his parish, even since the stat. 36 Geo. 3, c. 37, not being within the words or meaning of that law.

Rex v. Woburn, 10 East, 395, 402. Upon an appeal by the churchwardens and overseers of the parish of St. Alban, against an order for the removal of Mary Brown from Woburn to St. Alban, J. Hilliard, an inhabitant of the appellants' parish of St. Alban, and rated and paying to the poor rates of the said parish, was called as a witness on the part of the respondents, and refused to give evidence. The sessions were of opinion that John Hilliard was not *compellable* to give evidence, and quashed the said order, subject to the opinion of the court on this point. The court said, that the question being of general consequence, as involving the construction of the late act, they would advise upon it before they delivered their opinion. And *Le Blanc, J.* observed "That if the sessions had been aware at the time of the extent of the question, there would have been no difficulty: for if the witness were rejected on the ground of his being a party to the suit, his declaration of any facts touching the matter in issue would necessarily have been evidence against him."

On a question of settlement, a mortgagee, a rated inhabitant of the appellant parish, subpoenaed by the respondent parish, is not compellable under a *subpœna duces tecum* to produce the title-deeds of his mortgagor, nor can his attorney be allowed to produce an abstract of the deeds, nor to give parol evidence of their contents.

Rex v. Upper Boddington, 8 D. & R. 726. Two justices, by their order, removed Ann Leigh, widow, and her three children, from Upper Boddington to Staverton. Order quashed. Case:—Joseph Leigh, the pauper, Ann's late husband, was the son of George and Isabella Leigh, who for many years after the year 1776 resided in a house in the appellant parish. Notice had been given on the part of the respondent parish to a Mr. Thomas Hands, to the parish officers, and to their attorney, *subpœna duces tecum* served on Mr. Thomas Hands to produce at the trial all and every the deeds, papers, and writings relating to a certain messuage, cottage, or tenement and premises situate and being in Staverton aforesaid, heretofore the property of and belonging to George Leigh and Isabella his wife, or one of them, late of Joseph Leigh, deceased, and now of Richard and George Leigh, and lately on mortgage to the representatives of Mr. John Liddall, deceased, and particularly certain indentures of lease and release bearing date respectively the 8th and 9th of April, 1776, the release being tripartite, and made between Elizabeth Isham, spinster, second daughter and devisee of the last will and testament of William Isham, late of Staverton, weaver, deceased, of the first

(a) *Rex v. Gisburn*, 15 East, 57; *Rex v. Killerby*, 10 East, 292.

part, the said George Leigh, and Isabella, his wife, and the said Joseph Leigh, therein described as the only son and heir apparent of the said George Leigh by the said Isabella his wife, of the second part, and John Leigh, of Upper Boddington, weaver, and Henry Burditt, of Staverton, shoemaker, of the third part; which deeds it was contended would, when produced, prove a conveyance of the said house to the said George Leigh. The deeds of lease and release of 8th and 9th of April, 1776, were, before the removal of the pauper, in the hands of Mrs. Ann Marriott, as a mortgagee, at which time an abstract of them was made by a clerk of her solicitor, by the solicitor's direction. Afterwards these deeds came into the possession of Mr. Thomas Hands, as assignee of the said mortgage. Mr. Hands appeared in court in compliance with the subpoena, with a parcel of deeds, but objected to produce the one in question, as it formed one of the title-deeds of his property; and the court held that he was not bound to produce it. The respondents then called the clerk, who made the abstract. He proved that the deed from which the abstract was made consisted of a lease and release, though he did not particularly notice with what stamp; and it appeared to have been duly executed. The respondents then tendered the abstract as secondary evidence of the contents of the deed, or offered to give parol evidence of its contents by the clerk. To this evidence the appellants objected, and the court refused to receive it, and quashed the order of removal. *Bayley, J.* "I am clearly of opinion that the decision of sessions was right upon both points, and that their order therefore must be confirmed. Hands was a party to the appeal, and as such was not compellable by the adverse parish, by whom he was called, to give evidence at all. He was also interested as a mortgagee in the deeds, and as their production might by possibility have put his interest in jeopardy, he was justified in refusing to produce them. The deeds themselves not being produced, secondary evidence of their contents was certainly admissible; but then that secondary evidence must have been of an unexceptionable nature in point of law. Was the secondary evidence offered in this case of such a nature? Clearly not. The abstract was made by the attorney of a former mortgagee of the premises, of which the deeds constituted the title; and those deeds had come into Mr. Hand's possession as the assignee of that mortgagee. It was therefore an abstract made by an attorney for the purposes eventually of Mr. Hands, and as it remained in that attorney's possession after Mr. Hands became the mortgagee, must be taken to have been deposited there by him, and for his use and benefit, and the attorney was not at liberty to produce it. If so, it follows that the attorney could not be at liberty to give evidence of the contents either of the deeds or the abstract, because the whole of those contents were a confidential communication between a client and his attorney, and therefore privileged from disclosure; and as to the attorney's clerk, he stood precisely in the same situation as his master. I think it would be opening a door to great abuse of the confidence necessarily reposed by the client in his legal adviser, if we were to hold such evidence as this admissible." The other judges concurred. Order of sessions confirmed.

Rex v. Ashcomb, Hil. Term, 1820. The case stated the respondents produced their own churchwarden as a witness in support of their case. And the court being of opinion that the said witness, as a party to the appeal, is incompetent to give evidence therein, and the respondents not having produced any other evidence to establish a settlement in the appellant parish, this order is quashed, subject, &c., as to the admissibility of the churchwarden's testimony. Rule absolute for quashing the order of sessions.

The same point was raised in a case between *Ashill v. Aylesbear*, in 1831, but the case was abandoned.

See also *Rex v. Hardwicke*, 11 *East*, 557, where it was held that the declaration of a rated inhabitant was admissible, although it is exceedingly weak evidence in the case of a settlement. And the admissibility was determined on the principle that the inhabitants are substantially the parties to the appeal.

A churchwarden, though respondent, is a witness for his own parish.

7. Of Evidence.

The declaration is admissible, though the party who made it is alive. (*Woolway v. Rowe*, 3 Nev. & M. 849; 1 Ad. & Ell. 114.)

7. Effect of an Order unappealed against.

7. Effect of an Order unappealed against. (a)

1. How far it is Final.
2. Of what Facts it is conclusive, when Unappealed against.

1. How far it is final. (b)

Order not appealed against is final; and there can be no second order reversing the first, excepting by appeal.

Parish, upon whom an original order is made, cannot remove till that be reversed.

A second order must be obtained where a settlement has been completed since the first order.

The original order is, when unappealed from, conclusive. (c)

Except where the removal is to a place that does not maintain its own poor separate.

1. HOW FAR IT IS FINAL.

Malendine v. Hunsdon, Fol. 273. Two justices, by an order, send some persons to Hunsdon; two justices there, by an order, send them back again. By the court: "They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it."

Chalbury v. Chipping Farringdon, 2 Salk. 488. A person was removed, by an order from a parish in Warwickshire to Chalbury; from thence, by an order, to Chipping Farringdon. It was objected, that Chalbury ought to have appealed, and got the order upon them discharged; to which Holt, C. J., agreed; for sending the man to another place is falsifying the first order, which cannot be done but by appeal; for the order is a determination of the right against all persons, till it be reversed. Chalbury should have appealed from the Warwickshire order, and got that set aside, and sent the man back thither; and the justices there should have sent him to Chipping Farringdon. Therefore the latter order was naught."

Rex v. Widworthy, Andr. 4 (*ante*, 690.) If a person has an inchoate right of settlement in the parish removing him (*ex. gra.* as being entitled, when so removed, to administration of an estate in the parish,) which he afterwards perfects (by obtaining a grant of administration) before the appeal against the order of removal is heard, this does not authorize the sessions to quash such order. The proper course, in such case, is to remove him back by a new order. (And see *Rex v. Willoughby*, *ante*, 416, 649.)

Rex v. Leverington, Burr. S. C. 276; 2 Bott, 935. Removal from Sutton St. Mary's, to Leverington; and no appeal: and the sessions confirmed the order. Four months after the first order, a second order was made to remove the pauper from Leverington to Sutton St. Nicholas; which second order was confirmed upon appeal. By the court: "The second order, and the order of sessions confirming it, were quashed, and the first order was confirmed; for L. was bound by the first order unappealed from, unless some subsequent settlement appears, and four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions confirming the first order was quashed, as being a voluntary and extra-judicial act of the sessions, to confirm an order which was not complained of. A resolution to the same effect in *Godalmin v. St. Michael's*, Winchester, 13 Geo. II., was mentioned by the court.

But in *Rex v. Swalcliffe*, Cald. 248; 2 Bott, 896, where T. Hawkins and his wife were removed from Swalcliffe to Stourton, the sessions quashed the order, and stated specially, that the pauper was born at Swalcliffe; that in January, 1782, he was moved from Swalcliffe to Ascott, a large populous village, part of the parish of Whichford, and maintaining its poor in common with Whichford: Ascott did not appeal, and Swalcliffe filed the order at the Epiphany sessions, 1782, for safe custody. The pauper and his wife coming again into Swalcliffe, and not having acquired any subsequent settlement, Swalcliffe obtained the first-mentioned order, and sent the paupers to Stour-

(a) See *Rex v. Whiston*, H. 1836, as to the proof of the preliminaries by the party relying on the order.

(b) As to the effect of an order upon

an incomplete settlement, see *Rex v. Willoughby* (*ante*, 416.)

(c) See *Rex v. Mytton*, 4 Dougl. 333;

Cald. 536.

ton, where he had gained a settlement by hiring and service. It was contended, an order is conclusive only when directed to a place to which a removal can legally be made, and where there is to be found some person legally authorized to appeal; yet that here were no officers to act: that to omit to do a thing which was impossible to be done could not be conclusive upon any one: that Whichford could not in this case appeal; for not being parties, they were not entitled to be heard. By Lord Mansfield, C. J. "The removal to Ascott was, in truth, no removal at all; there was no reason for an appeal; it was a mere nullity." Order of sessions quashed. (See *Rex v. Denbighshire*, *J. ante*, 849.)

Rex v. Chilverscoton, 8 T. R. 178. W. Fennel removed from Sow to Chilverscoton. Order confirmed. Case:—The pauper, in 1779, married his present wife in Bedworth, where he then resided; they were afterwards removed to Sow by order: "To the churchwardens, &c. of Bedworth, in the county of Warwick, and to the churchwardens, &c. of Sow, in the county of the city of Coventry; whereas complaint has been made by you, the churchwardens, &c. of Bedworth, unto us whose hands and seals are hereunto set, two of his majesty's justices of the peace (whereof one is of the *quorum*), for the county aforesaid, (a) that W. Fennel, E. his wife, &c." [The other parts were regular; it was dated 16th March, 1779. No county was mentioned in the margin.] Against this order there was no appeal. In May, 1779, a certificate was granted by Sow to Bedworth, acknowledging the pauper to be settled in Sow, but, at the time of granting this certificate, no settlement had been gained in Sow, unless the above order from Bedworth to Sow had conferred one; but the pauper's settlement had always continued at Chilverscoton. Lord Kenyon, C. J. "It should appear upon the face of the order, that the justices who made it had jurisdiction; which, if they had, every fair presumption will be made that they decided rightly; but if they had not, the proceeding is a nullity. It is said, however, that the parish of Sow ought not to be permitted, at this distance of time, to object to the order; but there is a maxim that *quod ab initio non valet tractu temporis non convalescet*. And as this order was void at the time when it was made, because it does not appear that the justices who removed had any jurisdiction, it cannot have become a valid order by the time that has since elapsed. A general proposition, indeed, that an order of removal unappealed against, is conclusive on the parish to which the removal is made, cannot be shaken; but it must be understood as part of that proposition, that the order is not a nullity, but was made by two justices having jurisdiction to make it. The *Rex v. Stepney* (*Burr. S. C.* 23,) is, I think, decisive of the present." Lawrence, J., expressing some doubt on the subject, the case was not then finally decided; but afterwards Lord Kenyon, C. J. said, "that after considering the cases cited, and upon the authority of *Rex v. Stepney*, and *Rex v. Bedwin*, we are of opinion that the former order was a nullity; and though it was not appealed against, it was not conclusive on the parish of Sow." Order of sessions confirmed.

Rex v. Hulcott, 6 T. R. 583, though on a different statute, confirms *Rex v. Chilverscoton*. And see *Rex v. Stotford* (*ante*, 858), in which case the order was held to be voidable only on appeal; but the objection did not appear on the face of the order.

Rex v. Llanrhydd, *Burr. S. C.* 658. Two justices made an order of removal in May, 1768, from Llanrhydd to Ruthin, and the paupers were delivered to the officers of Ruthin, who maintained them for a while; and for some time after they were maintained at the joint expense of both parishes. Notice of appeal being served on the officers of Llanrhydd, on the morning of the sessions, previous to the filing of the appeal, the officers of Llanrhydd consented to take the paupers back to their custody, without giving Ruthin the trouble of appealing. Afterwards, in January, 1769, two other justices removed the same paupers from Llanrhydd to Denbigh.

1. *How far it is Final.*

Where the justices making the order want jurisdiction, it is a matter of substance, and not of form, and such an order, although not appealed against, is totally void, and cannot be amended.

An order may be deserted and given up by consent, without appealing.

(a) See *Rex v. St. Mary, Leicester* (*ante*, 856.)

1. *How far it is Final.*

The parish in whose favour an order of removal is made, may, by consent, abandon it, without waiting to appeal to sessions: and another order made by them, removing the pauper to a different parish, was held good.

By an order, unappealed against, a pauper is removed from A. to the parish of B., in the county of S. B. at that time consists of two townships, C. and D. (jointly maintaining their own poor,) in the county of S., and one township, (separately maintaining its own poor,) in the county of W. This order is conclusive upon that part of B. which lies in the county of S., *semble*. After the removal, C. and D., being

And upon appeal, their settlement was found to be at Denbigh. But it appearing that the former order had not been appealed against, the court were of opinion, that the order of removal from Llanrhydd to Denbigh ought to be quashed accordingly. Lord Mansfield, C. J. "That order was made in favour of Llanrhydd; Llanrhydd gave it up, and consented to take the paupers back, without giving Ruthin the trouble of appealing against it. May not a party give up a judgment intended for his own benefit?" The order of sessions quashed.

Rex v. Diddlebury, 12 East, 359. By an order, dated August 15th, 1809, M. Davies, single woman with child, was removed from Much Wenlock to Diddlebury. Order confirmed. Case:—Soon after the sessions in July, 1809, two justices, by an order, removed the pauper from Much Wenlock to Long Stanton; she was conveyed by the officers of Much Wenlock, and delivered, with the order, to the officers of Long Stanton, who received her, and maintained her for five weeks. On the 15th of August following a meeting was had between the officers of Much Wenlock and Long Stanton, who, finding the account given by other witnesses was different from that given by the pauper, on whose evidence the order of removal to Long Stanton had been made, and being of opinion that it could not therefore be supported, they mutually agreed to cancel that order, which they did, with the consent of the magistrates who had made it, and who thereupon made another order, which is the order now appealed against, and which was made before any sessions had intervened, to which any appeal against the first order could be made. There was no appeal against the order of removal to Long Stanton. When this case was called on, *Le Blanc*, J. said, "that the point had been expressly decided in *Rex v. Llanrhydd*" (*ante*, 901); and Lord Ellenborough, C. J. said, "that the point was so clear upon principle, that it did not want any authority to support it." Against the order, *Chalbury v. Chipping Farringdon* (*ante*, 900,) was cited; and it was urged shortly, that however an order made might be abandoned before execution, it could not afterwards; and being in the nature of a judgment executed, it could only be reversed by appeal." Lord Ellenborough, C. J. said, "There are two ways of getting rid of an order; one by the consent of the parish in whose favour it is made, to abandon it; the other, by waiting till the time of appeal, and appealing against it to the sessions, by whom it may be quashed if not supported. Here the parish in whose favour it was made, finding, upon further information, that they could not support it, very sensibly determined to abandon it at once by consent, and acted accordingly. And what objection can there be, as Lord Mansfield observed, in the case mentioned, to a party's abandoning a judgment intended for his own benefit? In the case of *Salkeld (Chalbury v. Chipping Farringdon)*, there was no consent of the party in whose favour the order of justices was made to vacate." *Per Curiam*: Orders confirmed. (See observation of Bayley, in *Rex v. Norfolk*, *ante*, 888.)

Rex v. Oldbury, 5 Nev. & Man. 547. Appeal against an order of removal of R. Thompson from West Broomwich to Oldbury. Order confirmed. Case:—The parish of Hales-Owen consists of the borough of Hales-Owen, the township of Oldbury, and ten other divisions situate in Shropshire, and three townships (Lutley, Cradley, and Worley), situate in Worcestershire. The three Worcestershire townships have always supported their poor apart from each other and from the rest of the parish. The township of Oldbury, the borough of Hales-Owen, and the ten divisions above mentioned, which lie in Shropshire, and which form the remaining part of the parish, until the separation of the township of Oldbury from them, as hereafter mentioned, always supported their poor *jointly*, and the affairs of the Shropshire part of the parish had, until that event took place, been administered by the churchwardens and four overseers, appointed respectively for four quarters, (Oldbury being one,) into which that part of the parish was divided. In 1832, this court made absolute a rule for a *mandamus* to compel the appointment of overseers for the township of Oldbury, pursuant to the 13 & 14 Car. II. c. 12, s. 21; since when that township has maintained its own poor distinct and apart from the other parts of the

parish. In 1816, the pauper, together with her father and the rest of his family, were removed by an order of justices from Harborne, Staffordshire, to the parish of Hales-Owen, in the county of Salop. Against this order no appeal was made, and no subsequent settlement has been gained by the pauper. The pauper having become chargeable in West Broomwich, (where she resided,) was removed to the *township of Oldbury*, by an order of 6th January, 1834. Against this order an appeal was entered, and came on for trial at the last Easter sessions for Staffordshire; when the respondents put in the order of removal made in 1816, and unappealed against. The appellants then proposed to prove that the pauper had never gained any settlement in Oldbury, but the respondents contended that the last-mentioned order being unappealed against, was conclusive upon the parish of Hales-Owen, and every part thereof, and that as Oldbury at that time formed part of the parish of Hales-Owen, it was now *estopped* from contesting the question of the pauper's settlement not being in that township. And the court of quarter sessions being of this opinion, declined to hear the evidence of the appellants, and confirmed the order. The question for the opinion of this court is, whether, under the circumstances above stated, Oldbury was precluded from contesting the question of the pauper's settlement, in an appeal against the present order. Lord Denman, C. J. "I remember that when I first read the case, I thought that the respondents were right in contending that the order of removal was conclusive. But upon more consideration, I think that the township of Oldbury is now estopped. In 1816, a removal was made to the whole parish of Hales-Owen, which then consisted of fifteen divisions; three in Worcestershire, and twelve in Shropshire. There is a good deal of difficulty introduced into the case, in consequence of the mode in which the parish of Hales-Owen is described in the first order of removal. The words 'in the county of Salop,' may be considered as introduced in order to identify the parish. Upon this I entertain much doubt. Supposing, however, the order to have been properly made to the whole parish, it appears to me that the township of Oldbury, which began to maintain its own poor some time after the order had been made, was at liberty to deny that it was estopped from giving evidence to show that the settlement was not gained in that part of the parish of Hales-Owen which constitutes the township of Oldbury. Were it otherwise, a removing parish would be at liberty to select any township in the parish. There is no estoppel, unless the parties are the same. The party in the order of 1816 was the parish. The party now is the township. As the parties removing the pauper thought fit to say that the pauper was settled in the township of Oldbury, they ought to have proved that fact. *Rex v. Oakmere* is inapplicable, since it relates to a district newly made parochial—not to an immemorial vill. Lord Tenterden says (5 B. & Ald. 778; 1 D. & R. 527, ante, 846), 'This case arises on the act 52 Geo. III. for inclosing the forest of Delamere, and the question is, whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township with regard to settlement, or only as becoming so from the time of its creation under the act, and as if it had been formerly uninhabited. And we are of opinion that the latter is the true construction and effect of the statute.' It would rather seem, therefore, that if that, instead of being a new district, had been an ancient division which could have maintained its own poor, when it began to have separate overseers, it would have become a separate township as from the earliest time, and would have constituted such a division as a removal might have been made to. Under these circumstances, it appears to me that we must take it that the township is not concluded by any order made on the parish of Hales-Owen." Patteson, J. "I entertain very considerable doubts upon this question. I thought, when the case was mentioned last term, that the township was estopped altogether, and precluded from denying that the pauper was settled in their township. My doubts are not cleared up now; but my lord and my brothers think that the township was not estopped, and I do not feel the doubts so strong as to lead me to say that I entirely differ from the rest of the court.

1. *How far it is Final.*

required by *mandamus*, elect separate overseers and maintain their poor separately; the same pauper is afterwards removed from A. to the township of C. C. is not estopped by the former removal.

1. *How far it is Final.*

The parish seems to have been divided long before the first order of removal was made, and it ought to be taken that the order was made on that part of the parish which lies in Shropshire; and the order being so made, the pauper was continuously settled in that division of the parish, and in the Oldbury part of the division as well as in the other parts. If it had been proved that the settlement had been gained by renting a tenement, not in Oldbury, that would not show that the pauper was not settled in Oldbury as to a third parish. Since the making of that order Oldbury has been separated from the rest of the division of the parish, but I cannot fully understand how, by a district's dividing itself into partitions, any particular portion can get rid of a liability that previously attached to the whole. At the same time there are great inconveniences in deciding the other way, because it would follow that every part would be estopped, as well as Oldbury. I confess I am not fully satisfied, but my doubts are not so strong as to make me differ entirely." *Williams, J.* "There is certainly the difficulty pointed out by my brother *Patteson*, that the parish, by their own act, are to get rid of a liability previously fixed upon them by the order of removal. Then, on the other hand, there is this difficulty, that if the pauper is conclusively settled in the whole and every part of the parish, and the parish were subsequently divided into twenty parts, a third parish might choose any one of the parts in which to fix the settlement of the pauper. It therefore comes to this, whether the precise ground on which the sessions have acted can be sustained. They have acted on the ground that this was an estoppel, and on that ground the evidence was refused. I think the township of Oldbury was not estopped. Admitting that the township is as distinct from the parish as Cumberland from Cornwall, I cannot conceive how a decision that the party was settled in the whole parish is any decision that he is settled in the particular district." *Coleridge, J.* "I am of the same opinion. I do not think this is a question of estoppel. The ground on which an order of removal unappealed from or confirmed, is conclusive, is not that it is an estoppel, but that it is an adjudication by a court of competent jurisdiction. The ground of my decision is this: the respondents have removed to Oldbury, and are therefore bound to prove a settlement *in that township*. They put in the order of removal to Hales-Owen. That alone will not do for them. They must therefore make out their case by showing, by parol evidence, that at the time when the order was made Hales-Owen and Oldbury were identical. The sessions prematurely stopped the inquiry. At the same time, I am aware the court may have great difficulty in dealing with the case when it comes before them again. On the present statement I think the sessions have done wrong." Order quashed; the case to be reheard.

2. *Of what Facts, &c.*

An order of removal of a wife and children is conclusive of the marriage.

2. OF WHAT FACTS IT IS CONCLUSIVE WHEN UNAPPEALED AGAINST.

Rex v. Northfeatherston, 1 Sess. Ca. 154. Order of removal of a man, his wife, and four children, naming them, to Featherston, and no appeal. Afterwards Featherston found out that this woman was not the wife, for that the man was married before to another. And they removed the woman by her maiden name to Horsington, and the four children thither as bastards. Horsington appealed; and the sessions stated that this woman and the four children were the same with those removed by the first order, and quashed the second order. And by the court: "They have slipped their opportunity, and the first order not appealed against is conclusive."

If two be removed as man and wife, it is conclusive of that fact upon the parish removed to, if the order be not appealed against; and after-born children, claiming settlement from the father and

Nympsfield v. Woodchester, 2 Stra. 1172. In 1731, a man and his wife were removed from Nympsfield to Woodchester, and no appeal. They afterwards returned to Nympsfield and had there three children, who were now sent from Nympsfield to Woodchester, together with the father. And upon appeal as to the children, evidence was offered that the man had a former wife, and, consequently, the children born at Nympsfield were bastards settled there. The sessions refused to go into this evidence, being of opinion that Woodchester was concluded by the first order, and that it made no difference

that the children were born afterwards. The court, on debate, confirmed both orders; for the marriage being established by the first order, the settlement of the children (which is derivative) follows of course, and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order, unappealed from, is conclusive.

In *Rex v. Silchester*, Burr. S. C. 551, the court were so clear in this as a settled point, that they did not hear counsel on the side of the objection.

Rex v. St. Mary, Lambeth, 6 T. R. 615. The pauper (with her three children) was removed as Elizabeth the wife of W. T. from St. Mary, Lambeth, to Huntspill. Order confirmed as to Elizabeth, but quashed as to the children. Case:—The pauper, Elizabeth, in 1784, was removed from Stoke-under-Hampden to Huntspill, with and as the wife of a man, to whom, before that time, she had been married, which order was unappealed from. The appellants offered to give in evidence, that the pauper Elizabeth had been married to W. T. illegally, he then having a former wife, and which wife was still living; the children were born of the pauper Elizabeth during her cohabitation with W. T.; and the court said, "that *Rex v. Southowram* (*infra*), and *Rex v. Lubbenham* (*ante*, 796), did not affect the authority of *Rex v. Woodchester* (*ante*, 904); and in that case it was established, that an order of removal unappealed against is conclusive, not only on the persons removed, but also on all derivative settlements from them."

Rex v. Rudgeley, 8 T. R. 620. Removal of Emanuel Smith and Elizabeth his wife from Acton Trussell to Rudgeley confirmed. Case:—In 1799, Elizabeth Smith was removed by the name and description of Elizabeth Smith, "widow," from St. George, Hanover-Square, to Acton Trussell; and against that order there was no appeal. It was said, that this was not a removal of Emanuel nor of his wife, *as the wife* of Emanuel, but simply of Elizabeth Smith, widow, and that, therefore, Acton Trussell had no notice of the ground on which the order of removal would be disputed. But *Grose, J.* said, "That this order was conclusive, as well as in the case of removal of one *as wife*; for that this description imported, that she was removed to a parish where her husband had gained a settlement, at least it put that question in issue, and therefore it behoved the parish to which the removal was made to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order; but as that parish did not then litigate the question, the court were bound, according to all the authorities, to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise." And *Lawrence, J.* agreed, and also said, "that the description '*widow*' raised a presumption that she was removed to the place where her husband was settled." *Le Blanc, J.* was of the same opinion and said, "that the cases of *Rex v. Silchester* (*supra*), and *Rex v. St. Mary, Lambeth* (*supra*), show that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though, in fact, she was not the wife; yet it was holden that the parties were precluded by the orders from disputing the settlements again upon subsequent removals. That the result of all the cases seemed to be this; an order of removal, unappealed against, is conclusive; an order of removal of a woman, though not as wife, is conclusive of the settlement of the husband as well as the wife; and the circumstance of the party being removed under a wrong description does not take the case out of the general rule." Both orders quashed.

Rex v. Towcester, 4 Doug. 240. If a wife is removed, and the order unappealed against, it is conclusive as to the husband's settlement, although it was not stated in the order that she was his wife.

Rex v. Southowram, 1 T. R. 353. Elizabeth Booth, widow, and her three children, were removed from Sowthowram to Northowram. The sessions stated, that it appeared by the evidence of William Booth (father of Jeremiah, late husband of the pauper,) that the said William and Jeremiah were born and settled at Halifax, but it did not appear that J. had done any act to

2. *Of what Facts, &c.*

mother, are also concluded as to the fact of marriage.

So also it is conclusive on all derivative settlements.

Where a pauper was removed by the name of E. S., "widow," and there was no appeal, it was held conclusive, not only as to *her* settlement, but as to that of her husband's also.

Order, unappealed against, is only conclusive as to those who are mentioned in it, and removed.

2. *Of what Facts, &c.*

An order of removal of B., as wife of J. S., which was not appealed against, was held conclusive of the question of marriage.

An order of vagrancy is not conclusive.

The order is conclusive as it regards the settlement adjudicated, and consequently of a derivative settlement.

gain a settlement; that on the 6th of April, 1774, William Booth and his wife, but not any of their children, were removed from Halifax to Northowram, who received them and did not appeal. Jeremiah and Elizabeth the pauper were married some years before the removal of William and his wife, and had those three children; and J., from the time of his marriage until his death, lived at H., in a house he rented, independent of his father, and was not removed by, or mentioned in, the order, nor was then any part of his family. By the court: "The order of removal, unappealed from, is conclusive as to the father and mother, but not as to the son, because he is not mentioned in it, and the sessions have expressly found that the son was settled at Halifax." Order of sessions confirmed.

Rex v. Binegar, 7 East, 377. Order of removal of Elizabeth Savage, otherwise Walters, by the name of E. S., single woman, from Midsomer Norton to Binegar, affirmed. Case:—In April, 1793, an order stated, "that John Savage, labourer, and Betty his wife, lately came into Kilmersdon, and are become chargeable; and upon the examination of the said Betty, the wife of the said John Savage, it was adjudged that J. S., and B. his wife, were legally settled in Midsomer Norton." Betty was removed from K. to M. N., and no appeal. On the 20th of July, 1799, there was another order, made on the complaint of the parish of Wellow, by which it was adjudged that the place of the lawful settlement of the said E. S. is in M. N. No appeal against this order. At Lady-day, 1803, E. S. hired herself and served a year with J. B. of Binegar. John Savage is still living. After she left this service she returned to M. N., and became chargeable to that parish. In May, 1805, J. S. was committed to the house of correction for having run away and left E. therein, called his wife, so chargeable; after this, he was at the sessions convicted of having so done, and was sentenced. The marriage between J. S. and E., before either of the said orders of removal were made, was a nullity. The question was, whether the respondents were estopped either by the orders of removal, or by the adjudication of J. S. to be a vagrant for running away and leaving his wife, from giving evidence to prove the marriage a nullity. The second order, treating E. S. as a single woman, was laid out of the case. And also the order of vagrancy was considered as an *ex parte* proceeding, and therefore not conclusive of the fact of marriage. And it was stated, that it did not appear that the parties ordered to be removed were within the jurisdiction of the removing magistrates; it only stated, that the paupers lately came into the parish of K., not that they were then in the parish at the time of the order made. Lord Ellenborough, C. J. "The order states, and the magistrates adjudge it to be true, that the paupers are likely to become chargeable to the parish, which could not be, if they were not in the parish at the time." Then it was urged, that here was no adjudication of a present settlement, only that the paupers were last legally settled in M. N. Lord Ellenborough, C. J. said, "That it referred to the time of the complaint made, and the court could not intend an intermediate settlement between the hearing of the complaint and the making of the order of removal." And the court considered the first order of removal as good upon the face of it, and conclusive of the question of marriage, which was involved in the judgment of the justices. Orders quashed.

Rex v. Catterall, 6 M. & Sel. 83. Order of removal of W. Waring, his wife and children, from Preston to Catterall, confirmed. Case:—In 1810, George W., father of the pauper, not then emancipated, gained a settlement by renting a tenement in Catterall. In 1814, he was removed by an order from Claughton to Inskip, which order was confirmed, the sessions not being satisfied of the value of the tenement at Catterall. When the order was made, the pauper was emancipated, but had acquired no settlement in his own right. It was insisted, that the order of removal of the father was conclusive as to the son, and that the value of the tenement at Catterall could not then be proved. Lord Ellenborough, C. J. "I own that it appears to me that in conformity to the rules which are applicable to judgments in other cases, we ought to quash the order of sessions. There is no doubt that the son is privy to the father's settlement; it is not pretended that he had any

other at the time of the adjudication of the father's settlement, or that he acquired any subsequently to it. The question now is, whether the son's settlement is to be governed by this adjudication, which, as it is a matter which regards the general municipal regulations of the realm, is of universal obligation and effect, unless fraud be shown. This, then, being a fair *bonâ fide* adjudication on the subject-matter, is conclusive as to all the world. The pauper either derived a settlement from his father, or he did not. If not, this adjudication could not affect his settlement, but if he did, then is his settlement determined by that which has been pronounced with respect to his father, to which he is privy." *Bayley, J.* "The difficulty I have felt in coming to this result, arose from the consideration lest we should thereby hold the son to be bound by an act to which he was not a party, and had no opportunity of giving an answer. But this difficulty is removed when it is recollected that this is not the son's appeal, and he might have appealed if he had been prejudiced by his removal. I forbear to give any opinion as to the question, whether it would have been conclusive against the individual if he had appealed." *Abbott, J.* "It is important that this question should be settled on general principles, rather than upon nice and petty distinctions. Now the general rule is, that an order of removal, confirmed upon appeal, is conclusive as to all other parishes, as it regards the settlement thereby adjudicated: and it is immaterial, as it respects this general rule, whether the child who derives the settlement from his father be named in the order or not. So, I think, it has been adjudged in other cases. As then the adjudication in 1814 decided that the parent's settlement was elsewhere than in Catterall, this was conclusive as to the son's settlement there, unless it could have been shown that the father acquired such settlement after the emancipation of the son." *Holroyd, J.* referred to *Rex v. St. Mary, Lambeth* (*ante*, 905), and the opinions of *Grose, J.* and *Le Blanc, J.* in *Rex v. Rudgeley* (*ante*, 905), and said, "these authorities appear to me to be decisive that the order in question, having been confirmed on appeal, is like a judgment of ouster, conclusive as to all the world, upon the point of the father's settlement, and of those deriving a settlement from him." Orders quashed.

Rex v. Knaptoft, 4 D. & R. 469; 2 B. & C. 883; 2 D. & R. Mag. Ca. 347. Order for the removal of Elizabeth Burdett from Gumley to Knaptoft confirmed. The case is fully stated in the judgment delivered by *Bayley, J.* "Two questions were raised for our consideration in this case. First, whether the prior order of removal, and the judgment of the court of quarter sessions quashing the same, were admissible in evidence in the present appeal? and second, whether the question put to the pauper's father, and interdicted by the court, ought to have been allowed and answered? The order of removal and the judgment thereon were tendered for the purpose of disproving the pauper's settlement in the respondent parish: the question put to the pauper's father, he having stated that he was examined at the former appeal, was, what facts he had there stated? We who heard this case argued are decidedly of opinion that the prior order of removal and judgment were not, with any explanation, receivable in evidence on the second appeal. The prior order of removal was quashed. That may have been done upon any one of three grounds. Either because the sessions were of opinion that the pauper was emancipated, and had acquired a settlement of his own; or because the respondents were not then in a situation to prove the father's settlement in the appellant parish; or because the appellants were able to prove a settlement of his elsewhere. The case does not inform us on which of these grounds the order was quashed, but it is conceded that it was quashed upon the merits, and not upon any point of form. If we believed that the ground of the judgment was the want of proof of the father's settlement in the appellant parish, and had then thought that the evidence was under those circumstances admissible, we should have sent the case back to the sessions for further explanation on that head; but we are of opinion that under none of the circumstances supposed the evidence was admissible, and therefore we think it better to dispose of the case in its present shape. As a broad and general proposition we may say that the order of removal, confirmed or re-

2. *Of what Facts, &c.*

The pauper may appeal. *Quære*, If such order then conclusive?

An order of sessions, made in 1815, quashing an order for the removal of the brother of the pauper to the appellant parish, and parol evidence to show that the ground of the decision of the sessions was that the father of the pauper had not at that time any settlement in the appellant parish, was received: Held, that even if parol evidence was admissible to prove the ground of the decision of the sessions, still that the order of sessions was not evidence that the father of the pauper was not settled in the appellant parish in 1815, because the father's settlement was a matter that arose collaterally on the trial of the first appeal.

2. *Of what
Facts, &c.*

versed upon appeal, or acquiesced in without appeal, is receivable in evidence, because it is a judgment of law. But where, and under what circumstances, is it receivable? This inquiry is answered by the rule laid down by *De Grey*, C. J. in the *Duchess of Kingston's case*, by which we find that to make the order receivable the parties in the case must be the same, and the point in issue must be the same: these are both indispensable qualifications. If the matter in issue be collateral or incidental, the evidence cannot be received. The language of that learned judge as applicable to the present case is, 'that a judgment directly upon the point is, as evidence, conclusive between the same parties upon the matter directly in question.' Does this case fall within that rule? Is the matter in question in the second appeal the same as that in the former? Is the judgment offered in evidence in the second directly upon the point which was in issue in the former? We think not. From the very nature and substance of the order of removal, it is merely collateral to the issue raised in the second appeal. By the original order, an individual, not the pauper in this case, was removed; the question to be tried on appeal was, where his settlement was? The judgment decided that his settlement was in a particular parish. That was the point there, and that was the matter in question; but it is not so here. The early case of *Harrow v. Ryslip* (2 Salk. 524; 3 Salk. 261), will illustrate this position. The case was this: A. comes into Harrow, and being likely to become chargeable, was removed to Ryslip; Ryslip appealed, and upon the appeal, A. was adjudged to be settled at Ryslip; afterwards Ryslip discovered that Hendon was the place of his last legal settlement, and sent him thither; and the question was, whether, after the adjudication upon the appeal, Ryslip was not estopped against all the world to say that Ryslip was not the place of his last legal settlement: *et per Holt*, C. J. 'Ryslip is estopped to say otherwise: for if Ryslip had not been the very place of his last legal settlement, the justices must have sent him back to Harrow, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to Ryslip. And now this is in effect the same question again, viz. whether he belongs to Ryslip? which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at Ryslip.' The report goes on to say,—'Afterwards this was moved again, and then *Holt* and *Gould* held the adjudication was final as to Ryslip against all persons and places, because the point of his settlement as to Ryslip was tried in the appeal; but as to Harrow, (for he had been formerly removed by them to Hendon, and that order reversed), they were at liberty to send him to any other place, and were not estopped; because the justices on the appeal did not adjudge him to be settled at Harrow, though they adjudged him now to be settled at Ryslip; so that the other point was not tried.' The language of the court in one part of this case applies to the instance where the order of removal is confirmed, and that on the other where it is reversed; and points out the distinction already alluded to between a judgment of confirmation and one of reversal. In the latter instance the sessions do not find where the pauper was settled, and thus the order of removal confirmed or unappealed from is conclusive evidence that the settlement is in the place to which he is removed; reversed, it is conclusive evidence that the settlement is not there; and beyond this point no case with which we are acquainted has ever yet gone. There are undoubtedly cases which show that where the point in issue is decided, all results flowing out of that point are decided also; as for instance that a wife's removal to the place of her husband's settlement, is conclusive to show that that is his place of settlement. But no case has ever gone further than to hold that the point decided is conclusive upon the same point, and therefore receivable in evidence; other points collateral or incidental to the point decided and undetermined by it are excluded from its operation, and cannot be proved by giving the point decided in evidence. It is the same with respect to judgments; they are merely evidence of the point decided. It is admitted that the pauper has no settlement in the parish to which he has been removed unless his father has acquired a settlement there. Then the father's settlement was a question which came in incident-

The order is not
evidence upon
points collateral.

ally, but incidentally only, and was not the point decided by the judgment in the first appeal, which consequently was not admissible as evidence in the second. For these reasons we are of opinion that the order of sessions in this case was right, that the sessions properly rejected the evidence tendered, and that the rule for quashing their order must be discharged"

Rex v. Kenilworth, 2 T. R. 598. Thomas Byfield, his wife and children, were removed from Birmingham to Kenilworth. Order confirmed. Case:—The pauper, on the 10th May, 1765, hired for a year to J. Chatterton, of Birmingham, and that day entered into his service, and continued in the same until 1st of April, 1766, when he was taken up on a charge of bastardy, and married the next day. His master did not make any complaint against him, nor discharge him from his service. On the 3rd of April he was removed from Birmingham to Kenilworth, where he remained until the 7th of April and then returned back to Birmingham into his master's service, who willingly received him again, and he continued in his service till the end of the year, and received his full year's wages. The order of removal was not appealed against. *Buller, J.* "There is no proposition in the law of settlements more clear than this, that *an order of removal unappealed against is conclusive against all the world*; and this is so clearly and universally established that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. After the order of removal unappealed from, the pauper could not legally return to the parish from whence he had been removed: it would have been a crime in him to do so: and if he could not return without committing a crime, he could not be liable to an action by the master for not completing his contract. If the law intervenes and disables a person from completing his contract, it puts an end to the contract. In this case the pauper returned after the order of removal to the parish of B. where he served a month; but that could not gain him a settlement there, for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself." *Grose, J.* "I doubt whether the party was liable to be removed, but there having been an order of removal unappealed from, it is decisive." Order confirmed.

Rex v. Corsham, 11 East, 388. The pauper was removed from East Moulsey to Corsham; and it was confirmed by the sessions, who stated that on the 9th of April 1807, he had been removed from Charlton to Garsdon, and no appeal had been entered against that order; which removal was subsequent to a settlement he had gained in Corsham." *Lord Ellenborough*, "If the pauper were settled at Garsdon at the time the former order was made, could not Corsham, as well as all other parishes, have taken advantage of that upon a question of settlement? Now the order of removal submitted to is the most authentic proof of his settlement being there at the time the order was made, and we must intend every thing in support of that settlement so adjudged. It is in effect a statutable certificate, if I may so express myself, that the pauper was then settled at Garsdon. The statute gives him a settlement *there*; and the fact stated by the sessions of a prior settlement in Corsham is immaterial." *Le Blanc, J.* "If the former order were not conclusive as to the settlement being in Garsdon at the time, Garsdon would escape the effect of it altogether, for this order would be conclusive upon Corsham, so as to prevent Corsham removing to Garsdon." Order quashed.

8. *Effect of Confirming or Quashing Orders of Removal Appealed Against.*

Mynton v. Stoney Stratford, 2 Salk. 527. By *Holt, C. J.* and the court. "If on appeal to the sessions an order be discharged, that judgment binds only between the parties; but when upon an appeal an order is confirmed, that is conclusive to all persons as well as to the parties, for it is an adjudication that this is the place of the party's last legal settlement, which cannot be avoided by the parish against whom it is made."

2. *Of what Facts, &c.*

An order of removal, unappealed against, is conclusive of the place of settlement up to that time.

This is the general rule.

Neg. Rex v. Wil-loughby, ante, 416.

Even when a question of settlement is raised between two other parishes.

8. *Effect of Confirming or Quashing Orders of Removal Appealed against.*

Order confirmed upon the appeal is final; but an order discharged binds only the parties.

8. *Effect of confirming or quashing Orders of Removal, &c.*

Order quashed does not conclude a third parish from the proof that the pauper was then settled in the appellant parish.

An order of removal discharged does not prevent a third parish from showing a settlement in the same parish, at the time of the order discharged.

Rex v. Cirencester, Burr. S. C. 17; 2 Bott, 521. The pauper was removed from Minety to Coln, St. Aldwin's; and on appeal the order was reversed. Afterwards he was removed from Cirencester to Coln St. Aldwin's. The former removal was on complaint of Minety; the latter on complaint of Cirencester: the pauper was sent on both complaints to Coln St. Aldwin's. On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive. By the Court: "An order confirmed binds all the world; but when discharged, it is binding only between the parties concerned. For the discharge of the order doth not determine where the pauper is settled; but only that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him." And Lord Hardwicke, C. J., said, "He took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes. And this distinction is reasonable; because a third parish may be able to give better evidence than the other could." And this latter order of sessions was quashed.

Rex v. Bentley, Burr. S. C. 425; 2 Bott, 919. The pauper was first removed from Baxterley to Stourbridge; which order, on appeal, was discharged. Then Baxterley removed to Bentley, and Bentley upon appeal offered to give evidence, that the pauper had gained a settlement at Stourbridge subsequent to the settlement which they acknowledged he had gained in Bentley. The sessions refused to hear it, because the settlement set up in Stourbridge was anterior to the first appeal. By Lord Mansfield, C. J., and the court: "An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction between all proper parties, for the parishes and the pauper were the only proper parties. It is establishing one certain fact, which, when ascertained, regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such-a-one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged is only a kind of negative finding that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, what is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this, 'Upon the case made out to us the pauper is not settled at Stourbridge;' but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence which another parish could not produce." And the orders were quashed.

Little Bitham v. Somerby, 1 Stra. 232. A person is sent by an order to Somerby as the place of his last legal settlement. Somerby appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, Somerby sends him to a third place. By the court: "An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and, therefore, no new settlement appearing, the order of removal from Somerby must be quashed. See also *Harris v. Ryslip* in the judgment of *Rex v. Knaptoft*, (*ante*, 908.)

St. Michael's, Beddington, v. Kingston Bowsey, 2 Salk. 486. Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal.

Foston v. Carleton, 1 Str. 567. A person was removed from Foston to Carleton. On appeal, the order is quashed; and at three months' end a new order is made to remove him from Foston to Carleton. But by the Court: "The last order must be quashed. *Barrow v. Ingoldsby*, E., 11 Anne, was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to show a new settlement."

Order quashed, conclusive only between the parties.

But it is conclusive as between them.

Rex v. Bradenham, Burr. S. C. 394; 2 Bott, 918. Order of removal, dated December 30, 1754, of John Saunders and Sarah his wife, and four children, from Thame to Bradenham. Bradenham appealed to the next (Epiphany) sessions, and the order was discharged. March 28, 1755, a new order was made for removing Sarah, the wife of J. S., and her children, from Thame to Bradenham. Upon appeal, the sessions adjudge the last settlement of Sarah Saunders and her children to be in Bradenham, and confirm the order. On removal of these four orders into the King's Bench, it was argued, that the order of reversal was conclusive between the two parishes, that so there might be an end of things; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. By the Court: "The last orders must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it must be conclusive. But it is said there are cases where there may be a new removal, as supposing there had been one or two years' distance between the two orders of removal, or a sufficient time to gain a new settlement; yet the court will not intend one gained, unless it is stated in the order. (a) And in this case there is no such time."

8. *Effect of confirming or quashing Orders of Removal, &c.*

Same point.

Rex v. St. Andrew, Holborn, 6 T. R. 613. M. Carter and her illegitimate son were removed from St. Andrew, Holborn, to Northaw. Case:— By an order, dated 24th July, 1794, M. Carter removed to Northaw. On appeal, the order, for want of a proper adjudication of the last legal settlement of the pauper, which was apparent on the face of it, was quashed. On the 25th of January, 1795, the present order was made, whereby M. Carter and her son were again removed from St. Andrew, Holborn, to Northaw. Upon appeal, the sessions were of opinion, that the first warrant and judgment, having been quashed, was binding between the two parishes. The last order quashed. Lord Kenyon, C. J., said, "That as the first order in this case was quashed for defect of form, which appeared by the minute of the sessions, it was essentially different from the cases cited, where the order was quashed generally, which must be taken to be on the merits. And it is undoubtedly law, that if an order of removal be quashed for form, it does not conclude the parties." Order of sessions quashed.

If quashed on form, not conclusive between the parties.

Rex v. Osgathorpe, 2 Stra. 1256. A person was removed by an order from Diseworth to Osgathorpe, which was quashed. He was by a second order sent from Diseworth to Osgathorpe as a certificated man; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so; and the sessions were of opinion, that the first determination was not final, and therefore confirmed the second order. It was moved to quash these two last orders, because a reversal is final between the parties. But by the court: "So it would be, if the special matter did not appear; a certificated person cannot be sent back until he is actually a charge; a removal before is premature. The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed."

But special matter may be set forth by the sessions upon the second appeal, which may prevent the first order from being final.

Rex v. Wheelock, 5 B. & C. 511. This was an application for a *mandamus* to direct the sessions to make a special entry that an order had been quashed for want of proof of chargeability, which, though the fact, the sessions had refused to do. A rule *nisi* was refused, Bayley, J., saying, "The respondents are not, at all events, concluded by the judgment of the sessions,

Appellant may show by evidence the ground upon which the former order was quashed.

(a) The accuracy of this decision may well be doubted. Unless there is some defect on the face of the order, how can the Court of King's Bench quash it, unless the sessions state their reasons specially? Besides, every intendment will be made to support an order. In this case, the pauper might have acquired a settle-

ment in Bradenham by forty days' residence on his estate between the 30th Dec. 1754, and 28th March, 1775, or he might have perfected a settlement inchoate only where the first order was made, as in *Rex v. Willoughby* (ante, 416.)

8. *Effect of confirming or quashing Orders of Removal, &c.*

Where an order of removal from A. to B. had been quashed at sessions, and another similar order had been afterwards made: Held, that it was competent on appeal from the removing parish to show that the first order was quashed on account of the pauper being at that time irremovable, but that he was so no longer.

but may, in the trial of another appeal against another order of removal of the same party, explain by evidence to the sessions the particular ground on which the former order of removal was quashed." *Holroyd, J.*, concurred.

Rex v. Wick St. Lawrence, 2 *Nev. & M.* 289; 5 *B. & Ad.* 526. Appeal against an order of removal of Elizabeth the wife of Isaac Harle (who had lately left the parish of Banwell) and the children of the said Isaac Harle, and Elizabeth his wife, from Banwell to Wick St. Lawrence. Order confirmed. Case:—It was proved that the paupers were in 1822 removed by an order from the respondent to the appellant parish; against which order there was an appeal to the Easter sessions in that year; and that the respondents having discovered before those sessions that the paupers were irremovable, by reason of their residing on a tenement purchased by the pauper Isaac for less than 30*l.*, determined to abandon their order of removal; that the reason was communicated by the then attorney of the respondents to the then attorney of the appellants, but no mention of the same was made to the court, and at the said sessions an order was made by the consent of all parties for quashing the said order of removal, in which order of sessions no mention was made of the ground on which the same was quashed. The court (on hearing of the present appeal), thinking themselves bound to admit the evidence above stated, overruled an objection to it made by the counsel for the appellants; and upon proof that the pauper Isaac did, before the order of removal now appealed against, sell the tenement which rendered him irremovable, and that he had before 1822 obtained a legal settlement in the appellant parish, the court confirmed the last order of removal. If the Court of King's Bench should think that the court of quarter sessions improperly admitted such evidence, and that the order of sessions in 1822 was, as between the present parties, conclusive of the pauper's settlement at that time, the order now appealed against was to be quashed. *Lord Denman, C. J.* "The only question submitted to us by the court of quarter sessions is, whether the parol evidence was properly admitted. The justices have drawn their conclusion from the facts proved; and I think it sufficiently appeared that the consent was given in consequence of its having been discovered that the pauper was irremovable. The question as to the admissibility of the parol evidence depends on the nature of the point actually decided by the court of quarter sessions when they quashed the first order of removal; for judgments of courts of competent jurisdiction directly on the point are, as evidence, conclusive between the same parties upon the same matter directly in question in another suit. Upon this principle a judgment at the quarter sessions confirming an order of removal is conclusive not only against the parish to which the removal is directed to be made, but (being a judgment in rem) against all the world, that the pauper, at the time when that order was made, was settled in the parish to which he was sent; for that is the point which the sessions must have decided when they confirmed the order of removal. An order of sessions, quashing an order of removal, is also conclusive between the contending parishes as to the point decided by it. Then the question is, what that point really is. It is that the parish to which the removal was directed to be made was not bound to receive the pauper. The court may have come to that decision, either on the ground that the pauper was not settled in the parish to which he was sent; or that he was not chargeable, or was irremovable when the order was made. That being the effect of an order of sessions quashing an order of removal, it seems to follow that if it be offered as evidence to prove that the pauper was not settled in the appellant parish, it may be shown by parol evidence that the judgment proceeded upon some other ground. It is said that the sessions ought to have made a special entry of the ground on which they quashed the order of removal, and there being no such entry, it must be presumed that they decided on the merits; but in *Osgathorpe v. Discworth* (2 *Str.* 1256; *Burr. S. C.* 261; *ante*, 911), there was no such entry on the face of the order, and therefore parol evidence must have been given on the trial of the second appeal to show that the pauper

was a certificated man when the first order of removal was made, and consequently not chargeable. That is an authority expressly in point; and in *Rex v. Wheelock* (5 B. & C. 511, ante, 911,) Bayley and Holroyd, Js. refused to compel the sessions by mandamus to make a special entry of the cause for which they had quashed an order of removal; and that on the ground that the party had his remedy by giving, on the trial of a second appeal, parol evidence of the distinct ground on which the order of removal was quashed. It is said that admitting parol evidence to explain such an order of sessions will be inconvenient; but supposing the inconvenience were greater than any I can see in the case, injustice is the greatest of inconveniences, and when an order of removal has been discharged, not on the merits but on other grounds, it would be great injustice if it could be set up as a decision on the merits by a party who knew that they had not been enquired into." *Parke, J.* "The only question referred to us by the sessions, is, whether they were right in receiving the parol evidence. It is not for us to enquire whether they came to a right conclusion on that evidence, though I have no doubt they did; but the only question now is as to the admissibility of the parol evidence, and I think it would lead to much injustice if it were inadmissible. There are two rules applicable to this subject; one is, that an order of sessions confirming an order of removal is conclusive against all the world; the other is, that an order of sessions quashing an order of removal is conclusive between the contending parishes; but it is conclusive only as to the point which it decides, i. e. that at the time when the order of removal was made, the appellant parish was not bound to receive the pauper. It is like an acquittal upon an indictment for not repairing a road, on a plea of not guilty, where the question of liability has not been raised on the record; such acquittal is no evidence that the parish was not liable, because it may have proceeded on a different ground, viz. either that the road was not out of repair, or was not a public highway. So an order of sessions, quashing an order of removal, may have proceeded either on the ground that the pauper was not settled in the appellant parish, or that he was not chargeable, or that he was irremovable. By analogy, therefore, such an order of sessions cannot be conclusive evidence that the pauper was not settled in the appellant parish. I think it would have been better if the court had held, that it was no evidence at all to prove any of the facts on which the decision may have proceeded, because it does not distinctly show upon the face of it on what ground it did proceed. The cases, however, show that it is *prima facie* evidence that the pauper was not settled in the appellant parish; but it must be competent for the respondents to show by parol evidence that the order of sessions was not made on that particular ground, for otherwise they would be subjected to great injustice. In some of the cases the special ground for quashing the order of removal has appeared on the face of the order of sessions; in others it has not. In *Osgathorpe v. Diseworth* the special ground was not stated on the face of the order of sessions. *Rex v. Wheelock* is a direct authority in favour of our present decision. There the order of removal was quashed in fact for want of proof of the chargeability of the person removed; but that ground was not stated on the face of the order of sessions, and this court refused a mandamus to compel the sessions to state that ground specially in their order, because the respondents might, on the trial of a second appeal, explain by evidence the particular ground on which the former order was quashed. Undoubtedly parties must have a right, either to have the ground stated on the order, or to prove it afterwards by parol evidence. As to *Munger-hunger v. Warden* (6 T. R. 614), I doubt whether that is any authority at all; it does not appear to have been decided on the question of settlement. It is a general rule, that the judgment of a court of competent jurisdiction is never final between the parties, except as to the point on which the court has adjudicated. Now here, the point adjudicated was merely that, at the time when the order of removal was made, the appellant parish was not bound to receive the pauper: and parol evidence was admissible to show that that was the matter really adjudged." *Taunton, C. J.* "I certainly had a strong impression in the first instance, that the decision of the sessions in this case

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was wrong. In the course of the argument, Mr. Erle has removed the difficulties I entertained. I think this falls directly within the authority of one case cited, and that it is also within the scope of another. I would be the last person to disturb the general rule laid down, that an order of sessions quashing an order of removal is conclusive between the contending parishes, and that an order of sessions confirming such an order is conclusive against all the world. But then, an order of sessions must operate with reference to the state of things existing at the time when it was made. Parol evidence, therefore, was admissible here to show the state of things when the first order was made, and explain to what extent it was intended to operate. The argument is, that if the parol evidence be admissible, it appears thereby that the ground for quashing the first order of removal was altogether temporary, inasmuch as the pauper then resided on a tenement which, being his own property, rendered him irremovable, but which was not of a sufficient value to give him a settlement: and, therefore, that the order of removal could not then be supported, it being premature: but that after 1822, a new state of things arose: the pauper sold his tenement, and was no longer irremovable: the right to remove him, which was only suspended, revived, and the sessions, in 1832, might take the new state of things into consideration. I think that view of the case correct. I rely chiefly on the case of *Osgathorpe v. Diseworth*; I do not place so much dependence on *Rex v. Wheelock*, because there the point now before the court arose incidentally and not directly. But I cannot distinguish this case from *Osgathorpe v. Diseworth*. There the pauper, who was a certificated person, was removed before he became chargeable, and a second order of removal having been made, upon appeal, the above facts appeared by evidence, (which must have been given to explain the first order of sessions,) and the sessions thought the first determination was not final between the parties, and made their order accordingly. On motion to quash the last two orders, on the ground that a reversal is final between the parties, the court said: 'So it would be if the special matter did not appear: a certificated person cannot be sent back until he is actually a charge: a removal before is premature: the consequence of which only is, that he must be suffered to remain till he does become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed.' So in this case, as long as the pauper resided in the parish on his own property, he was irremovable; but as soon as the property ceased to be his, he became removable. If a different rule were to prevail here, the consequence would be to make a premature removal decisive. I think the evidence was properly received, and that this case is not distinguishable from *Osgathorpe v. Diseworth*." *Patteson, J.* "I think we must assume that the sessions were satisfied that the first order of sessions was made on the ground of the pauper having been irremovable. If they were not so satisfied, they would not have sent the case here. It is admitted, that if the special ground for quashing the first order of removal had appeared on the face of the order of sessions, it would not have been conclusive. The question then is, whether the parol evidence was properly received. Now on that point I cannot distinguish this case from *Osgathorpe v. Diseworth*. I think it would be much better if the special ground for quashing an order of removal were always stated on the face of the order of sessions, because it would then be unnecessary to give parol evidence on the trial of the second appeal, which is always attended with great expense: but on the authority of *Osgathorpe v. Diseworth*, I think parol evidence may be given on appeal against a second order, to explain the ground on which the first was quashed. It appears that in that case the ground for quashing the first order of removal was not stated in the first order of sessions, but that it was stated to the court on the trial of the appeal against the second order of removal. *Rex v. Wheelock* is not in point, but I am at a loss to see how the court could have refused a mandamus, unless they had been of opinion that upon appeal against another order, parol evidence of the circumstances might be received, for otherwise it is clear that the party must have a right to have the special ground appear on the face of the proceedings, and the court in that case would have interfered to enforce it." Order of sessions confirmed.

Rex v. Cottingham, 4 Nev. & M. 215; 2 Ad. & E. 251. Two justices made an order removing Sarah Moor from Cottingham to Patrington. The order adjudged that the legal settlement of the pauper was in Patrington, and it was in all respects regular on the face of it. On appeal the sessions quashed the order. No case was stated. The order of sessions was, that the order "be quashed for informality, and that the respondents, the churchwardens and overseers of Cottingham, do pay to the appellants, the churchwardens and overseers of Patrington, the sum of 30*l.* 16*s.* 8*d.* for their costs in prosecuting this appeal." The two orders having been brought up by certiorari, a rule was obtained to show cause why the order of sessions should not be quashed. Lord Denman, C. J. "The court of quarter sessions ought to have absolute dominion as to law and facts which come before them. We can know only what they send to us; they have quashed this order on the ground of informality. What the informality is, we do not know. It is argued, that it must be an informality on the face of the order, I cannot agree to that. Interpreting the meaning of the magistrates according to popular language and in the usual sense of the words, we must understand that they meant to state that the order was not quashed on the merits; and it is reasonable that they should do so, to prevent their order from having an effect in binding parties which it ought not to have. The case of *Rex v. Wick St. Lawrence* (5 B. & Ad. 526; S. C. 2 Nev. & M. 289; ante, 912,) supplies an instance in which an order was held not to be binding, because the decision was not on the merits. As to the question of costs, the order would certainly be bad if the act had said that costs should be granted only when the decision turned on the merits, but that is not so. The act says, that the justices may award costs to the party for whom the appeal shall be determined. They may justly think a removal vexatious which has been made under circumstances producing what they call an informality. It is not necessary that the determination of the appeal should be on the merits. In *Rex v. The Justices of Essex* (8 T. R. 583, ante, 885) a question arose as to the power of the sessions to award costs, and it was held that they had no such power, but there the appeal was not entered, and the statute gives the power only where the appeal is 'determined.'" Taunton, J. "I am of the same opinion. There are two ways in which the proceedings of a court of quarter sessions may be erroneous. They may be defective on the face of them, or they may be erroneous from facts apparent on a special case. Here there is no special case, but on the face of the order of the court of quarter sessions it appears that the original order was quashed 'for informality.' The only question then is, whether such informality could be an informality only on the face of the original order, certainly none such appears. But notwithstanding this, I think there might be an informality in some part of the proceedings, and such an informality as could come before this court no otherwise than by a special case. But if this court see that there *might* have existed some circumstance making the original order informal, we must confirm the order of sessions, there being no special case. I do not agree that all the cases put by Mr. Hildyard would be cases of informality, but looking at the order of sessions, and nothing being brought positively before us to show that it is wrong, I think it must be affirmed. It is a wholesome rule, that this court is not to entertain a jurisdiction over extraneous matters coming before the sessions unless they be specially stated. If it were otherwise, if we could go into the merits without a special case, there would be in almost every instance a discussion upon affidavits. As to the question of costs, I fully agree with my lord. The words of the statute are quite strong enough to give the power of awarding costs in the case of an order quashed for informality." Patteson, J. "If the word 'informality' in this order of sessions is to be used in its strict legal sense, the sessions have done wrong in quashing the original order. But if it may be understood as merely used in contra-distinction to the merits of the case, we cannot say what the ground has been upon which the order has been quashed, and we can act only on what we see. As to the costs, I agree that the words of the act do not restrict the power of the justices to cases of decisions upon the settlement." Williams, J. "The

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An order of removal, regular on the face of it, was on appeal quashed by order of sessions "for informality." No case having been stated, and the two orders being brought up by certiorari, this court affirmed the order of sessions.

The court of quarter sessions in the same order awarded costs to the appellant: Held, that they had power to do so under stat. 8 & 9 W. 3, c. 30, s. 3, though the order appeared to be quashed for informality only.

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question is, whether 'informality' means a strict legal informality, or whether the word is used in a more popular sense. I do not see why the more popular sense may not be that which the justices intended, and this is the more probable, as the entries of the courts of quarter sessions are frequently made with great laxity." Order of sessions affirmed.

9. *Of Amendments by Sessions.*

Enabling statute, 13 & 14 Car. 2, c. 12, s. 2.

5 Geo. 2, c. 19, s. 2.

Defects of form to be amended.

IX. *Of Amendments by Sessions.*

The 13 & 14 Car. II. c. 12, s. 2, declares, that the justices upon the appeal shall do justice between the parties, *according to the merits of their cause.*

And the 5 Geo. II. c. 19, s. 1, provides, that on all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause *defects of form* therein to be rectified, without costs, and after such amendments shall proceed to examine and consider the truths and merits of the cause.

Power is given to the justices to amend defects of form; and this power should be liberally exercised, as they may order the amendment to be made on payment of costs. The legislature evidently intended that whatever did not relate to the "truths and merits of the cause" should be considered matter of "*form*." This is not the sense however in which that word was interpreted in *Rex v. Cottingham* (*ante*, 915) and *Rex v. Wick St. Lawrence* (*ante*, 912.)

The omission of a complaint, and of adjudication of chargeability, is not a matter of form that can be amended.

Rex v. Great Bedwin, 2 Sess. Ca. 142; 2 Stra. 1158. Order of removal of a certificated person, in which there was no complaint nor adjudication of chargeability. On appeal the sessions amend the order in these particulars, as matter of form only, and insert such complaint and adjudication. And now the question was, whether these amendments went only to form or substance. By Lee, C. J. "There has been but one case in this court on this act since the making of it, and that was not determined. The present seems to be a very strong case against the power of amending. For there must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificated person must be *adjudged* to be actually chargeable, otherwise he cannot be removed; and these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act to take it so largely; and would be giving the sessions an original jurisdiction." And quashed by the whole court.

Nor of the jurisdiction of the justices.

Rex v. Chilverscoton, 8 T. R. 178 (*ante*, 901.) The two parishes were in different counties, and no county mentioned in the margin. The justices were described as justices of the *county aforesaid*. Lord Kenyon, C. J. "It is now too late to discuss one of the points made at the bar, namely, whether or not the sessions could amend in this case, it having been decided in *Rex v. Great Bedwin* (*supra*) that the sessions can only amend mere defects or wants of form. I verily believe that if the legislature had been asked *what was their intention when they passed statute 5 Geo. II. c. 19*, they would have said they meant, that if upon inquiry it appeared that the pauper had been removed to his proper parish, the sessions would have power to correct all defects in the order: but the decision to which I before alluded was made ten years after the passing of the act, and at a time when Lord Chief Justice Lee, who was peculiarly conversant in sessions law, presided here. And though I lament that that decision was made, because it renders the statute of little avail, yet it has been acted upon ever since, and it is important to adhere to determinations respecting settlements."

The true construction, but not observed.

Rex v. Moor Critchell, 2 East, 66 (*ante*, 856.) Lord Kenyon, C. J. said, "That it was to be lamented that the 5 Geo. II. c. 19, which was intended to give the justices in sessions a power of amending orders of removal, which were defective in point in form, had, by the construction which had been put upon it, been rendered a dead letter, as all defects of this sort had been considered to be matters of substance, and not of form."

The sessions may alter the word "parish" to "vill."

Rex v. Amlwch, 4 B. & C. 757; 6 D. & R. 627; 3 D. & R. Mag. Ca. 303. (See *ante*, 755.) It was part of this case that in April, 1824, overseers were appointed for the parish of Llanerchymedd. The order of removal was

directed to the churchwardens and overseers of the parish of Llanerchymedd. To this it was objected, that Llanerchymedd was not a parish. The court of great sessions directed the order to be amended in this respect, and the appellants denied their right to do so, which forms the first point in this case. If they had that power, the case stands as if the removal had been to the parish or vill of Llanerchymedd. *Bayley, J.* "I am of opinion, that giving a fair construction to 5 Geo. II. c. 19, the sessions had the power to make this amendment. This order was directed to the churchwardens and overseers of the parish, and the fact was, there were no churchwardens of L., and it was not a parish but a vill. The persons for whom the order was intended, received it, for they appealed against it, by the description given to them in the order. Upon the appeal they said that L. was not a parish, but an extra-parochial vill, or in other words they pleaded misnomer; that was a mere matter of form. *Rex v. Great Bedwin* (ante, 916) is very distinguishable, because in that case there was no complaint, nor any adjudication of chargeability; there were material facts and essential parts of the order, for the justices had no power to remove, unless there was a complaint from the overseers; and a certificated person could not be removed unless he was adjudged to be actually chargeable." *Holroyd, J.* "It was material in point of substance that the order should be directed to a district, the inhabitants of which were bound by law to maintain their own poor." In this case the sessions also erased the word "churchwardens."

In *Rex v. Bingley* (ante, 853) the sessions amended the order by substituting the "township" for the "parish."

X. Power of Sessions in Orders of Removal.

1. Of their Judgments upon Orders of Removals.
2. Of Special Cases thereon.
3. Of Costs and Maintenance.

It is important that the sessions should bear in mind, in adjudicating upon orders of removal, that the justices by whom the order is made, and also those who are rated or rateable in either of the contending parishes, or whose interests may be affected by the judgment, have no right to vote upon the determination of an appeal. (*Rex v. Yarpole*, 4 T. R. 71; *Rex v. Gudridge*, 5 B. & C. 459, *infra*.)

Rex v. Gudridge, 5 B. & C. 459; 8 D. & R. 217; 4 D. & R. Mag. Ca. 35. A writ of *certiorari* issued under these circumstances: Upon an appeal against the accounts of the overseers, the order for allowance was quashed. The respondents applied for a case, but a majority of justices then present refused it. After some of them had left the court, a case was again applied for, and three voted for and two against it. One of the three was a rated inhabitant of the respondent parish, and had not voted on the decision of the appeal. The case was afterwards drawn without the concurrence of the appellant. *Abbott, C. J.* "We think it the safer course to hold that magistrates should not interfere in cases where they are interested; and that the rule for quashing the *certiorari* (*quia improvide emanavit*) must be made absolute." (See *Rex v. Justices of Monmouthshire*, post, 919, and *Rex v. Justices of Leicestershire*, post, 919.)

1. OF THEIR JUDGMENT UPON ORDERS OF REMOVAL.

Rex v. Bond, 2 Show. 503; 2 Bott, 922. The court of quarter sessions cannot make an original order of removal.

Rex v. Oswell and Woking, 2 Salk. 472; 2 Bott, 926. The sessions ordered the order of removal from Oswell to Woking to be superseded, and that the person should be removed to "Woking aforesaid." And it seems that the court were of opinion that the sessions could not supersede, though they might repeal an order of removal.

Rex v. Milverton, 2 Bott, 928. The sessions ordered that the order should be quashed, and the party sent to the parish from whence he was removed.

9. Of Amendments by Sessions.

10. Power of Sessions in Orders of Removal.

Magistrates cannot vote on appeals where they are interested.

1. Of their Judgment upon Orders of Removal.

The sessions cannot make an original order of removal.

Must either quash or affirm.

The sessions cannot order the

1. Of their
Judgment upon
Orders of
Removal.

pauper to be re-
turned to the
respondent pa-
rish.

An order may be
good in part.

The sessions may
alter an order
made at same
sessions, but not
of a previous
sessions.

Where justices
are divided.

And it was held that they had only power to affirm or quash, but not to make a new order; and also that because an order might be good in part, and bad in part; the first part was confirmed and the latter quashed.

St. Andrew's Holborn v. St. Clement's Danes, 2 Salk. 494; 2 Bott, 929. The sessions made an order, and afterwards, at the same sessions, vacated it. Both orders were returned upon a *certiorari*; and by Holt, C. J. "You should not have returned the vacated order, but only the latter. There ought not to be two different judgments. The sessions is all one day, and the justices may alter their judgment at any time while it continues; but they cannot rescind the order of a previous sessions." (*Rex v. Cuckfield*, 2 Bott, 925.)

Rex v. Justices of Westmoreland, 2 Sess. Ca. 193; 2 Bott, 931. Appeal to the sessions, at which only four justices were present, who were equally divided; so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, and the other two were divided in opinion. It was agreed on all hands that this return was not to be supported. It was objected that the *mandamus* ought to be quashed, because it doth not appear that the appeal was before them; and that for ought appears, the *mandamus* requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, since the appeal, being lodged at a former sessions, was not continued over to the subsequent sessions, and therefore was by law gone. On the other side it was said, that it was not usual in such cases to return the continuances; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till, by the coming of more justices, the matter might have been determined. Lord Hardwicke, C. J. "The question is, whether there is a possibility of the justices' proceeding in this appeal?" He thought if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions.

[Note.—The chief justice advised the proceeding on the appeal, or returning the continuances, and seemed inclined to grant a peremptory *mandamus* if they did not do so.]

The sessions,
being equally di-
vided upon the
merits of an ap-
peal, quashed it:
Held, that a *man-
damus* would not
lie to rehear it.

Rex v. Justices of Monmouthshire, 4 B. & C. 844; 7 D. & R. 334; 3 D. & R. Mag. Ca. 410. Upon an appeal against an order of removal, it appears that the justices were divided in opinion as to the settlement; but thinking that the respondents ought to have proved the forty days' residence, and had not, they determined, without any division, to quash the order. It was urged that whether the decision was right or wrong, the King's Bench ought not to interfere by *mandamus*; and it was also urged that the decision of the sessions was right; and although it is true that in *Nolan's Poor Laws* (vol. ii. p. 446,) it is said, "That if the magistrates, who have a right to join in the court's determination, should be equally divided in opinion, no judgment can be given, but the appeal must be adjourned from sessions to sessions, until a majority concur." And in the note, "This seems to be their bounden duty; for otherwise the court will grant a *mandamus* to compel them to enter continuances and hear the appeal at a subsequent sessions." *Bodmin v. Warlingen* (2 Bott, 733, 889;) and *Rex v. Justices of Westmoreland* (2 Bott, 734, *supra*,) are cited in support of, but do not support these positions. In the former case, the justices neither made any order nor adjourned the appeal: and at the following sessions the order of removal was quashed, and this court quashed that order of session, because it was made without an adjournment. In the other case the justices neither gave judgment nor adjourned, and on an application for a *mandamus*, though the court entertained an opinion in its favour, nothing was done; but if a *mandamus* had been granted, that would only show that the court will compel the sessions to proceed to judgment on an appeal which they have begun to hear, and improperly refused to go on with. It was also urged, that this was not like an appeal to the House of Lords, where, if the house be equally divided, the respondent prevails, for the presumption is in favour of the respondents,

who have the judgment of the court below. But that an appeal against an order of removal is in reality an original proceeding. *Contra*, it was argued in *Bodmin v. Warlingen*. The court said that where the justices were equally divided, that was a sufficient warrant for the clerk of the peace to have entered an adjournment, and it was his duty so to have done. *Abbott*, C. J. "I think the rule for a *mandamus* ought to be discharged. It appears, that in this case the sessions have given their judgment. This court is not a court of error from that court; it may compel the sessions to proceed to hear and decide the appeal; but when they have so determined it, this court cannot compel them to correct their judgment, if it appear to be erroneous. It is unnecessary to say whether the judgment pronounced by the sessions is erroneous, because we are of opinion that if it were so we have no authority to compel them to correct it."

1. *Of their Judgment upon Orders of Removal.*

Rex v. J. Monmouthshire, 8 B. & C. 137; reported as *Rex v. Uske*, 2 M. & R. 173. Application for a *certiorari* to bring up an order of removal, and an order of sessions for adjourning the appeal against the said order, that the same might be quashed. It appeared that four justices were present at the appeal. One of them was the removing justice, and rated to the poor of Uske (the respondent parish). He and one other justice voted for the respondents, and the other two for the appellants. The chairman announced that the court was divided. The appellants then moved to quash the order, because the respondents had not made out their case. But the court adjourned the appeal. Lord *Tenterden*, C. J. "This rule must be discharged; but I wish to have it clearly understood that, in doing so, we do not, in any degree, intend to sanction a magistrates voting in any case in which he is interested. It is contended that, though the justices were divided in point of fact, that in point of law the vote given by the party interested was a nullity, and that the sessions ought to have quashed the order. The late decisions establish, that we cannot assume to ourselves the jurisdiction of a court of error and revise the judgment of the sessions. It is said that the sessions had not jurisdiction to make the adjournment. It is clear that they had jurisdiction to make any order concerning the appeal; and, among others, the order that the hearing should be adjourned. In *Rex v. Gudridge* (*ante*, 917) the rule which had been obtained was, not to review the order of the sessions, but to quash the *certiorari*, *quia improvide emanavit*. The question before the court was, whether that writ ought to have been allowed to issue to remove an order of sessions, made under circumstances similar to those in this case? And the court thought that the *certiorari* ought not to have issued. Here a judgment has been pronounced by the sessions, relating to a matter over which the court had jurisdiction; and assuming their judgment to be erroneous, I think we have not jurisdiction, as a court of error, to review it."

By the vote of an interested justice the court were equally divided, and an adjournment was entered. Assuming this to be wrong, K. B. cannot review it.

Rex v. J. Leicestershire, 1 M. & Sel. 442. This was an appeal against an order of two justices, for the removal of William Clifton from Market Harborough to Biddenham, which came on to be heard at the Epiphany sessions, when the chairman pronounced the judgment of the court for confirming the order; but one of the justices who made the order, being present at the hearing of the appeal, inquired of the clerk of the peace, whether he was not one of the justices making the order; and being answered in the affirmative, observed that, it being contrary to a rule of that court, for justices who had made orders of removal to vote on the hearing of any appeal thereon, his vote, in this case, must consequently be withdrawn; and therefore judgment must be for quashing, instead of confirming the order, as by taking away his vote, the majority would be against confirming and for quashing the same. The clerk of the peace thereupon entered the judgment of the court for quashing, without perceiving at the time, that, by withdrawing the vote of the said justice, the votes of the remaining justices would be equal; whereon, by the rules of the court, an adjournment of the appeal should have been entered, instead of a judgment to quash the order. Under these circumstances, a rule *nisi* was obtained for a *mandamus* to the justices to enter con-

Where judgment was entered by mistake, on a miscalculation of votes, the court of K. B. refused to interfere.

1. *Of their
Judgment upon
Orders of
Removal.*

tinuances on the said appeal to the next general quarter sessions, and then to hear and determine the same. Lord *Ellenborough*, C. J. "If any error was made in the entry of the clerk of the peace, that error should have been pointed out at the sessions while the court was sitting, and competent to reform its own errors, and to draw out a more correct judgment. If no judgment had been pronounced, the court might have interposed; but here there is a judgment. The party who would have corrected the error should have applied to the proper forum, and in due time; and if it had been found that the numbers were equal, nothing would have been done upon it; for it would have been a nullity: but here no step of that sort was taken, but judgment was entered; and this court cannot, in order to supply a remedy, exercise a jurisdiction which does not belong to them." *Grose*, J. "This court ought not to countenance such an application, inasmuch as the error should have been noticed at the time." *Bayley*, J. "Except in matters of a criminal nature we cannot look *dehors* the record. This court cannot sit as upon a scrutiny before an election committee. In *Bodmin v. Warlingen* (2 *Bott*, 982), the objection appeared upon the entry of record, made by the clerk of the peace." Rule discharged.

2. *Of Special
Cases.*

2. OF SPECIAL CASES. (a)

Whenever the sessions entertain a doubt upon the law, as applicable to the facts disclosed upon the hearing of an appeal, they are in the practice of authorizing the party against whom they decide to have their judgment reviewed by the Court of King's Bench. This is called *granting a special case*. The sessions, however, are not bound to this course whenever they are pressed to adopt it by the counsel for the defeated party, but may exercise their discretion; and where they have no doubt in their own minds, they ought to refuse, in order to save the parties from further expensive litigation. (*Rex v. Darley Abbey*, 14 *East*, 285. (b) 597) On the other hand Lord *Hardwicke* said, "that if the justices will not state the facts specially, though requested to do so, when the matter is doubtful, this is very blameable conduct in them." (See *Rex v. Preston-upon-the-Hill*, *post*, 921.)

Special cases substituted in place of statement for judge of assize to determine. (c)

This practice of stating a case for the opinion of the court is a very wholesome substitute of the old mode, by which the facts were specially stated in the order of sessions, and then referred to the judges on the circuit. The appeal for this purpose was adjourned, and then the order of removal either quashed or affirmed, according to the opinion of the judge. Still the order might be removed into the King's Bench; and in *Cuerden v. Leyland* (*ante*, 495), was quashed, though the judge on the circuit had given an opinion in favour of it. But in *Rex v. Natland* (*ante*, 696), the sessions directed a case to be drawn up for the opinion of the judge of assize, and agreed to be determined by his opinion. The judge heard counsel on both sides, and gave his opinion; and, upon a notice for a *certiorari*, Lord *Mansfield* observed, "that it was a manifest consent of the parties to this reference to the judge,

(a) May be granted on a question of rateability, 10 *Bar. & Cres.* 163; 1 *B. & Adol.* 113. Forms and specimens of special cases will be found in the Appendix.

(b) At the Middlesex intermediate sessions, on an appeal by G. Acklam, Esq., appellant, and the trustees of St. Luke's, Chelsea, respondents, on 20th of June, A. D. 1833, after hearing Mr. Bodkin for the trustees and Mr. Clarkson for the appellant, Mr. Broughton, the chairman, (in answer to an application by Mr. Bodkin that a case might be allowed

for the consideration and determination of the Court of King's Bench,) said, "it was not usual to grant a case when all the magistrates on the bench were unanimous." Mr. Rotch, the magistrate and M. P., expressed the same opinion, and after some discussion the case was refused.

(c) Special cases from sessions should be always drawn by counsel. (*Rex v. Woolpit*, 5 *Nev. & Man.* 526, 538; and see *Rex v. Great Wishford*, 5 *Nev. & Man.* 540.)

and therefore it was like all other references, by consent; and after this consent, he thought it very improper to take the matter up again." Where it was agreed that several cases should abide the issue, King's Bench will not interfere. (*Rex v. Justices of Worcester*, 9 D. & R. 210.)

If the justices will not state the case specially, though it may be blameable conduct in them in some instances, yet there are no means to compel them. In *Rex v. Oulton* (*Burr. S. C. 64*), an order of removal, upon appeal, was confirmed generally, without stating any case. The appellants excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of the exception was, that the children, removed after their father's death, went with their mother to an estate of her own at Burnham Overly, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions together with the order of removal. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. But by Lord *Hardwicke*, C. J. "To what purpose should we make a rule to show cause why this order of sessions should not be quashed? For I do not see that we can ever make such a rule absolute; because this, that it is alleged to have been the real state of the case, doth not appear to us to be the fact. And how can we take it for granted that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law." And Mr. *J. Page* said, "he never knew an instance that this court could force the justices, against their will, to state a special case."

In *Rex v. Great Wishford*, 5 Nev. & Man. 540, where, upon a case for the opinion of Court of King's Bench, the sessions state the facts and draw their conclusions, the court will not disturb the finding, unless it appear that the evidence was contrary to the finding, or that there was no evidence to support it.

Rex v. Preston-upon-the-Hill, *Burr. S. C. 77*. Order for removal from Daresbury to Preston upon appeal confirmed generally; not caring to state any special case in their order. A motion was made to quash these orders, which came before the court upon a bill of exceptions containing a special state of the case. On showing cause, the single question was, whether a bill of exceptions would lie in this case to a court of quarter sessions? By Lord *Hardwicke*, C. J. "This is a case of great consequence, and there may be very great inconveniences on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (though requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniences arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may, by such means, be rendered dilatory, expensive, and burthensome." And after a full hearing of the arguments on both sides, the court were unanimously of opinion, that a bill of exceptions doth not lie to the quarter sessions.

It was moved to set aside an order of sessions confirming an order upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. (1 *Vent.* 310.)

South Cadbury v. Braddon, 2 *Salk.* 607; 2 *Bott.* 751. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say whether they discharge it for form, or on the merits. But by the court: "The justices are not bound

2. *Of Special Cases.*

Sessions are not compellable to state cases.

A bill of exceptions does not lie to the quarter sessions.

The justices at sessions are not bound to express the reason of their judgment.

2. *Of Special Cases.*

to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record, as where judgment is arrested upon an insufficient indictment.

If the sessions reverse the first order, and that, being removed, appears to be good, this court must intend it was reversed on the merits, and affirm the order of sessions. So also if the order is reversed specially for want of form, and no defect of form appears on the face of it, the court will infer that it was quashed for some extrinsic informality.

If the sessions reverse the first order, and that, being removed, appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

So, if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court must reverse it, because it appears naught.

The justices should find the facts, and not merely state the evidence from which the facts are to be drawn.

In stating a case it is the duty of the justices to find the facts, and not to state the *mere evidence* of the facts and leave the court of King's Bench to draw the inference which the justices below ought to do. (*Rex v. Lyth*, ante, 349; *Rex v. Bottesford*, ante, 428). Sometimes the facts are stated without noticing the points for consideration. (*Rex v. Harbury*, 1 B. & Ad. 360.) This however is very inconvenient. The points for argument should be distinctly stated. But where the sessions stated that *it appeared* to them that the pauper was bound, the King's Bench thought this sufficient, as "it is not necessary that the evidence should appear to us." (*Rex v. E. Knoyle*, 2 Bott, 644.) If a particular term has acquired a local meaning, the sessions must state the sense in which the word is used, for without such explanation, the King's Bench will understand it in its ordinary meaning; and in this case the order of sessions was quashed, (*Rex v. Thornham*, ante, 600). Where it was insisted that the term, "Landsell Colliery," imported an interest in land, Willes, J., said, "We cannot take notice of the meaning attributed to the term, and said to be so understood in the North by the trade unless it were so stated to us." (*Rex v. N. Bedburn*, Cald. 452.) The justices are also the proper judges of fraud, and must find it as a fact; (4 Nev. & M. 355; *Rex v. Tellingham*, 1 B. & Ad. 180); although it may be a question for the King's Bench, whether the fraud so found, prevents the pauper from gaining a settlement? (See *Rex v. Birmingham*, ante, 840, see also *Rex v. Tedford*, ante, 729. *Rex v. Kibworth Harcourt*, ante, 653.) Where the sessions draw a conclusion, and state the facts specially, the Court of King's Bench will not, although they do not concur in the inference drawn, disturb the decision if there are any premises to warrant it. The court has not however adhered to this rule, and in many instances have reversed the judgment. (*Rex v. Rickingall Superior*, 1 Nev. & M. 47; *Rex v. Clarby*, 1 Nev. & M. 118; *Rex v. Nether Knutsford*, 1 B. & Ad. 726; *Rex v. Norton Bavant*.) And it has been observed in some recent cases that the court must presume that where the facts are specially stated by the sessions, that the justices wish to know if their inference is correct. (*Rex v. St. Andrew, Cambridge*; *Rex v. Rosliston*; *Rex v. St. Martin, Leicester*.) "If upon a case stating evidence only the court of King's Bench should think the conclusion drawn by the sessions wrong, they would probably deem it better to send it back for revision; but where the conclusion appears to be right, it would be useless to send it down again." (*Abbott, J. Rex v. Great Yarmouth*, ante, 839). So, also, the order of sessions will be confirmed, when the ultimate decision, although founded on wrong grounds, was correct. (*Rex v. Skeffington*, ante, 579). When the case is insufficiently stated, the King's Bench frequently send it back to be reheard. (1 B. & Ad. 362.) But it was agreed in *Rex v. Wykes*, (ante, 862) that it could not be done without consent; and the counsel against the order of sessions refusing to consent, the order of sessions was quashed. Where the sessions were of opinion that an indenture was void, and the King's Bench thought otherwise; "as the merits of the case had not been

gone into at the sessions,' the case was sent down to be re-stated. (*Rex v. Winwick*. (a) 2. *Of Special Cases.*

When the sessions improperly rejected evidence of the contract of hiring, and a case was granted upon the admissibility of the evidence, the case was sent back to the sessions to be reheard. (*Rex v. Wrangle*, 2 *Adol. & El.* 13; 4 *Nev. & M.* 375.) If the case is signed by the chairman, strong evidence is required to show a mistake in any part. (5 *B. & Ad.* 883.)

Rex v. Bray, Burr. S. C. 682; 2 *Bott*, 993. The sessions stated the evidence only, and not the fact of hiring. (b) It was sent back to be re-stated: and the majority of the justices there refused to re-examine the pauper, or to hear any further evidence; although three of the justices then on the bench had not been present at the appeal. It was moved to send it again to the sessions, to be a second time restated. *Rex v. Page, M.*, 1764, was cited, where the question was, whether a man was occupier of tithes, or only bailiff? The sessions was ordered to hear further evidence; and did so, and cited *Rex v. Hitcham, H.*, 33 *Geo. II.*, where the sessions did re-examine the fact, whether the pauper was a single or a married man, when hired? Unto this it was answered, that in both of these cases it was necessary to hear the evidence again: in the present case it was not necessary; the matter was fully examined into before; the sessions had stated the evidence, without drawing the conclusion; the court thought the sessions ought to have drawn the conclusion, and sent it back to them for that purpose only. They have now done so. They have stated a hiring for a year. And this court have now received all the information they wanted. By Lord Mansfield, C. J. "Whether the justices, at the second sessions, were or were not obliged to hear new evidence, is a question that must depend upon the nature of the case. In *Page's* case new evidence was necessary. But in the present case it was sent back only to cure an informality. Here the pauper had before given a full account of the agreement. Therefore the justices at the second sessions did very right in not examining him over again."

Case sent back to cure an informality. It is not necessary to hear fresh evidence. But see subsequent cases.

In *Rex v. Bromley*, 6 *T. R.* 330, which was an order for the removal of Sarah, widow of J. Ward, the respondents proved the settlement of J. Ward in the appellant parish, and then cohabitation with the pauper as his wife. The appellants then called Sarah, to prove that they were never married, and the court refused to hear her. Lord Kenyon said, "The evidence was admissible, but the sessions must judge of the effect of it." It was then proposed that on the rehearing the sessions should be confined to the examination of Sarah and of witnesses to that particular point, without putting the respondents to the expense of proving their case again. Lord Kenyon, "The whole case must be gone into again at the sessions. I remember a case some years ago when the same objection was made, and Lord Mansfield said, that it was like granting a new trial, in which case the whole case must be proved."

The whole case must be reheard when it is sent back to the sessions.

Rex v. Bloxam, 3 *Nev. & M.* 385; 1 *Ad. & E.* 386. At the Warwickshire January sessions, 1832, James Smith having been convicted by Dr. Bloxam of being an idle and disorderly person, in refusing to support his wife and child, whereby they became chargeable to the parish of Rugby, appealed against the conviction, which was quashed by the sessions subject to a case. Dr. Bloxam thereupon obtained a *certiorari* to remove such case and the orders and proceedings of the sessions in the Court of K. B., and the usual recognizances were entered into for prosecuting the *certiorari*. On the hearing in K. B., the case was sent back to the sessions to be restated. At the July sessions, 1833, the appeal was reheard, and the court then confirmed the conviction, subject to a case reserved to the appellant. In Michaelmas term, 1833, a rule of

A case sent back to the sessions to be restated must be reheard, and the sessions may receive further evidence and make a new order on such rehearing. The *certiorari* by which the original order was removed does not operate to remove the subsequent one. The

(a) In *Rex v. Laindon, n.*, the court said, that a formal objection to the order ought not to be permitted, when both parties had agreed by drawing up the special case, to take the opinion of the

court on the merits. See also *Abbott, J.* 5 *M. & Sel.* 93.

(b) Such formal defects are now generally amended at the time of argument, by consent of the parties.

2. Of Special Cases.

party wishing to contest such order must obtain a certiorari and remove it. A certiorari cannot be applied for after the expiration of six calendar months from the making of the order, &c., to be removed whatever may have been the cause of delay.

K. B. was obtained calling on the prosecutor of the appeal to show cause why the recognizances of the defendant (Dr. Bloxam) and his bail should not be discharged, and why all further proceedings on the *certiorari* and the restated order of sessions returned therewith, should not be stayed until the prosecutor's attorney should undertake to pay the defendant or his attorney his costs if the last decision of the sessions should be affirmed. It was stated on affidavit, in answer to this application, that the ground on which the case was before sent back to the sessions, was their omission to state certain facts; that they had now specially found those and other facts, but that such their special finding was inconsistent with the determination they had come to in favour of the conviction; that at a subsequent session (October, 1833,) the appellant had moved that the case should be restated, and the proceedings returned to K. B. under the original *certiorari*, and an order had been made by the justices accordingly. A rule was thereupon granted by K. B. enlarging the rule for discharging the recognizances, until the judgment of that court should be given upon the restated case and order of sessions, in the matter of the above-mentioned conviction. In Hilary term, 1834, a rule was obtained calling on the prosecutor of the appeal to show cause why the rule last above-mentioned should not be discharged, and why the *certiorari* should not be quashed, and a *procedendo* awarded to carry back the record of conviction to the sessions. The affidavit in support of this rule professed to explain the finding and judgment of the sessions complained of by the appellant; and it stated that, although the sessions had made an order for restating the case and returning the proceedings to K. B., no case had ever been prepared or brought up on behalf of the appellant under the existing writ of *certiorari*, nor had he applied for any new *certiorari* for that purpose, and that six months had elapsed since the reservation of a case at the July sessions; it was therefore suggested that the prosecutor was now disabled from further carrying up such restated case or proceedings to K. B., under the present or any other *certiorari*, that the conviction must remain in force, and that the object of the respondent in suing out the *certiorari* and giving the recognizances having thus been effected, the recognizances ought to be discharged. In an affidavit on the other side, it was represented that the delay in preparing the case had been occasioned by the defendant's refusal to settle one. Lord Denman, C. J. "By 13 Geo. II. c. 18, s. 5, a *certiorari* must be applied for within six months next after the conviction, order, or other proceeding to be removed: and according to the authorities cited in 1 Chitty's Statutes, tit. *Certiorari*, p. 133, note c, the time is to be reckoned without regard to delays in drawing up the case, or from any such cause; and if this were not so held, the statute would in effect be repealed. It follows from the express words of the act, that the court has no power of extending indulgence to a party who from whatever cause is behind the proper time. Then however it is said that the original *certiorari* is still in force. The question therefore is, whether when a party has obtained a *certiorari* to remove a judgment given against him, and the case has been sent back to the sessions, which implies a power given to them of rehearing the whole, he is afterwards bound, upon the sessions reversing their former judgment, to bring up proceedings which are then in his favour: or whether the *certiorari*, when originally issued, had the effect of removing those proceedings which had not then taken place? and I think this cannot be maintained. As to the question, who should remove the ultimate proceeding of the sessions, it is often unnecessary to raise it, because if the second hearing convinces the justices that their former decision was right, the judgment is the same, and no such difficulty can arise. But where an opposite decision is come to, he who complains of it is the party to bring up the case. The appellant ought to have done so in the present instance, but he is out of time. The proper course will be to discharge all the rules, the case will then stand as if there had been no appeal." *Littledale, J.* "I am of the same opinion. The party who originally removed the proceedings has nothing to do with removing them now. They have changed sides." *Patterson, J.* "I do not acknowledge the distinction between restating and rehear-

ing. How is it possible for the sessions to restate the case without hearing it again? The bench may not consist of the same persons. If the *certiorari* were considered as operating upon the last order of sessions there would be this absurdity, that the party who sued it out would be liable under his recognizance to pay costs, unless he got a judgment set aside which was in his own favour." *Williams, J.* concurred. The court made the rule absolute for discharging the recognizances, but with this exception discharged all the rules.

After the determination of an appeal at the sessions, if the order is reversed, and the paupers will not, or are not able to return of themselves, to the place from whence they were improperly removed, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. In *Honiton v. South Beverton* (*Comb.* 401; *2 Bott*, 909), two justices remove a man from Honiton, Devon, to South Beverton, Somerset. They appeal to the sessions in Devon, where the order is reversed. Now two justices of Somerset may by order remove him to Honiton again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of sessions.

A special case granted by the sessions is removed by *certiorari*, and therefore if that writ be taken away by statute, local or otherwise, no case can be brought up to the superior court. (See *Certiorari*.)

Rex v. Justices of Sussex, 1 M. & Sel. 631. A rule was obtained for a *certiorari* to remove an order, in an appeal between Billingham and Slinfold. The affidavits stated that the appeal had been heard at the Michaelmas sessions, when the order was confirmed, subject to the opinion of K. B. on a case to be stated. A case had been drawn by counsel for Billingham in November, which was not approved of by the solicitor for Slinfold; but, although frequent applications were made to him, he would not state his objections. The case was afterwards settled by the court at the Epiphany sessions, and a copy sent to the solicitor for the respondents; and he was again applied to to have the case set down for argument: this request he refused to comply with; but at the same time gave the solicitors for the appellants to understand, that they need be under no apprehension, as he would consent to a *certiorari* issuing without regarding whether the six months had expired or not. Under the impression that the *certiorari* would be consented to, the usual notice to the justices, as required by 13 Geo. II. c. 18, s. 5, had not been given. It was contended, that the statute was only intended to enable justices to show cause against the granting such *certiorari*, and did not apply to this case, where the justices themselves had settled the case, and thereby expressed their desire to have it brought up; and cited Lord *Kenyon* in *Rex v. Battams* (1 East, 298.) Lord *Ellenborough*, C. J. "The order of removal was in the first instance a summary proceeding, and the order of sessions thereupon was a revision of that which was originally a summary proceeding. I find nothing in the language of Lord *Kenyon* on which an argument has been raised to the contrary: it is not applicable to the present case. Admitting that the magistrates may have wished, at the time when they settled the case, to have brought it up; still there may be reasons why they might think fit to show cause, and, unless it can be shown that it could serve no possible end to give them six days' notice, we cannot so presume. The statute appears to me imperative." *Bayley, J.* "was not aware of any instance where a *certiorari* had been granted, after the expiration of the six months, upon a case reserved, and that it was the settled practice to give the six days' notice." Rule discharged. The application was renewed in the same term (1 M. & S. 734), the six days' notice having been given to the justices. It was urged, that the above circumstances took it out of the general rule. *Rex v. Winpenny* (34 Geo. I.) was cited, where a similar application, for removing an order for the maintenance of a bastard child, was made after the six months, and allowed. Lord *Ellenborough*, C. J. "The statute expressly requires that the *certiorari* shall be applied for within six calendar months after order made; and I think it will be attended with beneficial

2. *Of Special Cases.*

What is to be done with the pauper when the order of removal is quashed.

If no *certiorari* then no case.

A *certiorari* to remove an order of sessions, confirming an order of removal by two justices, must be moved for within six calendar months after such order of sessions made, and six days' notice of such motion must be given to the justices, pursuant to 13 Geo. 2, c. 18, s. 5, notwithstanding the order of sessions was made subject to the opinion of the Court of K. B. on a case to be stated, which was afterwards stated and settled by the justices at sessions.

2. Of Special Cases.

consequences, if we put a strict interpretation upon this clause, as it will have a tendency to accelerate the settling of the cases which are intended to be brought up for our revision." *Bayley, J.* "In strictness, the case ought to have been settled at the Michaelmas sessions *sedente Curia*." Rule refused.

When a case is granted, the unsuccessful party sues out a *certiorari*, which is obtained upon the signature of counsel, though it appears by *Rex v. Sawbridgeworth* (1 *Barnard*. 297), that formerly there was a motion made for a rule *nisi* in court, and in that case the court "denied the motion, without so much as making a rule to show cause." The case is then set down for argument in the crown paper. If the court of quarter sessions refuse to grant a case the orders cannot be set aside for any defect not apparent on the face of them; for the Court of King's Bench will not take cognizance of the facts on affidavit. (See *Rex v. James*, p. 252.)

3. Of Costs and Maintenance.

3. Of Costs and Maintenance.

8 & 9 W. 3, c. 30, s. 3.

Justices on appeal to them concerning the settlement of any poor person, to award costs.

By 8 & 9 W. III. c. 30, s. 3, (a) "For the more effectual preventing of vexatious removals and frivolous appeals, it is enacted, That the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter sessions, award and order to the party from whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, as aforesaid, such costs (b) and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty, or town corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same; and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of twenty days."

Also of frivolous grounds of appeal.

By the 4 & 5 W. 4, c. 76, s. 82, the court of sessions may order the parish against whom the appeal shall be decided to pay just and reasonable costs, and the court is to certify the amount; and by the 83d section, if any of the grounds of appeal are frivolous and vexatious, the court may award the costs of disputing such grounds. These costs, as well as the maintenance, are recoverable in the same manner as the penalties under the statute. (See the sections in the Appendix.)

Of Maintenance.

The parish to which the pauper shall belong shall pay the relief and maintenance of the pauper from the time of receiving notice of the chargeability. Section 84.

If appeal against removal be determined in favour of appellant, the justices shall

By 9 Geo. I. c. 7, s. 9, "For the preventing of vexatious removals, if the justices of the peace shall, at their quarter sessions, upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person or persons was or were unduly

(a) As to costs of suspended orders costs of the day when appeal respited, of removal, see *ante*, 871. *Rex v. Monmouthshire*, 1 *Bar. & Adol.*

(b) The statute does not extend to 897.

removed, that then the said justice shall, at the same quarter sessions, order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made, for, or towards the relief of such poor person or persons, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal are prescribed to be recovered by the said statute made in the ninth year of his late majesty King William the Third, intituled (c. 30.) '*An Act for supplying some Defects in the Laws for the relief of the Poor of this Kingdom.*'"

Rex v. J. Nottingham, 1 Sess. Ca. 422; 2 Bott, 776. A *mandamus* was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and quashed the *mandamus*.

Rex v. Stansfield, Burr. S. C. 205; 2 Bott, 776. The sessions adjourned the appeal to the next sessions, and ordered four guineas costs to the appellants; which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it.

St. Mary's, Nottingham, v. Kirklington, 2 Sess. Ca. 67; 2 Bott, 776. Motion for a *mandamus* to the justices, commanding them to allow Kirklington the expense their officers had been put to, in keeping a poor person from the time of his removal till the order was discharged by the sessions upon appeal. *Mandamus* granted.

And as to the enforcing or punishing disobedience of order of sessions, see *Rex v. Mytton*, 4 Doug. 333.

Rex v. Great Chart, Burr. S. C. 194; 2 Bott, 1015. An order was quashed by the sessions for insufficiency; and the sessions thereupon order that the costs of maintaining the pauper since the time of his removal shall abide the event of the cause, in case Great Chart shall think proper, by another order, to remove the pauper to Kennington; which order, as to the costs, was quashed by the Court of King's Bench, because the sessions must either give or not give costs *at the time* when they make their order. *Semble*, therefore the court at time of confirming an order subject to a case, should make a conditional order for costs and intervening maintenance.

Rex v. Cottingham, 4 Nev. & M. 215; 2 Ad. & E. 250, ante, 915. The sessions have power to award costs where the order is quashed for informality.

Rex v. J. Norfolk, 5 B. & Ald. 484; 1 D. & R. 69; 1 D. & R. Mag. Ca. 22; and ante, 888. An order for the removal of Hannah, the wife of E. George, had been executed, but, by consent of the removing justices, had been superseded. It did not appear whether the costs of maintenance between the execution and supersedeas had been paid. The sessions had refused to enter the appeal. Upon a motion for a *mandamus*, Bayley, J. said, "In cases like this, the justices may exercise a discretion whether they will enter the appeal or not, so as best to answer the purposes of justice. If the parties removing do not choose to pay the expenses of maintenance incurred previously to the supersedeas, they may then enter the appeal for the purpose of compelling them to do so. If they are willing to do it, the sessions may refuse to enter the appeal. But costs cannot be granted unless the appeal is entered. (See *Rex v. Essex*, p. 227.)

3. *Of Costs and Maintenance.*

award to appellant payment of expenses as relieving the pauper.

Allowance of costs discretionary.

No costs on an adjournment.

Mandamus lies to enforce.

Sessions must either give or not give costs at the time they make their order.

May give costs where order quashed for informality.

Appeal may be entered after the order has been abandoned by the removing parish, on neglect to pay the costs and maintenance.

ADDENDA.

PAGE 37.—After *Rex v. St. Martin's*, insert *Golding v. Fenn*, 7 Barn. & Cres. 765. A custom that there shall be a select vestry of an indefinite number of persons continued by election of new members made by itself and not by the parishioners, is valid in law. *Semble*, that it must be part of such custom that there should always be a reasonable number, and that the reasonableness of the number must be decided with reference to long established usage, and to the population of the parish, such custom having existed from time immemorial in a parish. In the year 1662, by a faculty granted by the Bishop of London, forty-nine persons, together with the vicar and churchwardens, were named as the select vestry, and that number was to be kept up by elections to be made by ten at least of those forty-nine, together with the vicar and churchwardens. In the year 1673 this number of ten was by another faculty reduced to seven, and these faculties were acted upon ever afterwards. Ten out of the fourteen vestrymen, exclusive of the vicar and churchwardens, who were present at the vestry holden next before the promulgation of the first faculty, were part of the forty-nine named in that faculty. Held, that as the vestry appointed by the faculty, and since continued, was not inconsistent with the vestry previously existing by the custom, the custom was not destroyed by the parish having accepted the faculty and acted upon it ever since, the faculty not being binding in law, and the vestry having power at any time to depart from its directions.

Page 172.—“No tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same; nor any person in respect of such tolls or toll-house shall be rated or assessed towards the payment of any poor's rate, or any other public or parochial levy whatsoever.” (See *Rex v. Dover Road Trustees*, Mich. Term, 1836.)

Tolls and toll-houses of turn-pikes exempted from poor rate.

Page 173.—After *Rex v. Grand Junction Canal*, insert *Rex v. London Gas Company*, 8 B. & C. 54. Upon appeal against a rate made for the parish of St. Bride, London, the sessions confirmed it. Case:—The rate appealed against was duly made on the 22d of September 1826, on the inhabitants and occupiers of lands, houses, shops, warehouses, and other tenements or hereditaments within the parish of St. Bridget, otherwise St. Bride, in the city of London, for the relief of the poor from Midsummer-day then last past to Michaelmas-day then next ensuing, being a rate of 1s. 6d. in the pound upon the annual rent or value of the said lands, houses, shops, warehouses and other tenements and hereditaments of and in the same parish, as far as the same could be ascertained. The City of London Gas Light and Coke Company was rated as follows:—

The 7 Geo. 3, c. 37, which enacts that certain lands to be embanked from the river Thames shall be “free from all taxes and assessments whatsoever,” exempts the occupiers of premises built on those lands from payment of poor rates in respect of such occupation.

£1200.	The City of London Gas Light and Coke Company for houses, sheds and premises, Daniel Benham, secretary, resident	£90	0	0
£12.	The City of London Gas Light and Coke Company for houses and premises, Daniel Benham	£	0	18 0
£24.	The City of London Gas Light and Coke Company for houses and premises, Daniel Benham	£	1	16 0

The premises for which the company is rated and charged in the said assessment at the sum of 90*l.*, upon the annual rental or value of 1200*l.*, consist of a wharf, buildings and premises abutting on the river Thames, near Blackfriars Bridge, held by the company under a lease granted by the New River Com-

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pany, a part of which premises is in the said parish of St. Bridget, otherwise St. Bride, and liable to be rated thereto at the sum of 60*l.*, upon the annual rental or value of 800*l.*, and the remaining parts of such buildings, together with the wharf and premises, covering and comprising a space of 22,642 feet, superficial measure, which are assessed in the said rate, upon the annual rental or value of 400*l.*, and which the London Gas Light and Coke Company claim to be exempted from the said rate, are built upon ground and soil which were formerly part of the ground and soil of the river Thames, and were enclosed and embanked by the New River Company, and became vested in the City of London Gas Light and Coke Company as lessees for a term yet unexpired, of the adjoining wharf and ground in front of which the said ground and soil of the said river were so inclosed and embanked. The inclosure and embankment were made by the New River Company under the act 7 Geo. III. c. 37, by which (after reciting that it would tend to remove many inconveniences if the ground and soil of the river Thames between certain limits, including the land in question, was inclosed and embanked,) it was enacted, that it should and might be lawful for the mayor, aldermen and commons, in common-council assembled, to inclose and embank the said ground. By the second section the owners of wharfs abutting on this ground were authorized to inclose that part of it opposite their premises at their own expense, giving certain notices to the town-clerk of the city; and by the 51st section it was enacted, that the ground and soil of the said river so to be inclosed and embanked in the front of every such wharf, should vest in the owner of such adjoining wharf, *free from all taxes and assessments whatsoever*. By the 52d section certain quit-rents were imposed upon the land so to be inclosed; and a quit-rent, amounting to 23*l.* 11*s.* 8½*d.* per annum, payable by virtue of the act for the land in question, was redeemed by the New River Company, in the year 1769, for the sum of 471*l.* 14*s.* 2*d.* An act was passed in the 39 Geo. III. entitled “An Act for the better Relief and Employment of the Poor of the Parish of St. Bridget, otherwise St. Bride, Fleet Street;” by the 18th section of which the churchwardens and overseers of the poor were required “to make one general equal pound-rate or assessment for and towards the relief of the poor, and other the ends and purposes of the act, upon all and every person and persons who did or should inhabit, hold, occupy, possess, or enjoy any land, house, shop, warehouse, coach-house, stable, cellar, vault, or any other building, tenement, or hereditament within the said parish, and on every other person and persons who by law was, were, or should be chargeable or liable to be assessed for or towards the relief of the poor.” In the 7 Geo. IV. an act to amend this act was passed, but the 35th section, relating to the poor rates, was the same as in the former statute. The New River Company, whilst in possession of the ground and soil for which the exemption is now claimed by the London Gas Light and Coke Company, were several years regularly rated to the poor rate of the parish of St. Bridget, otherwise St. Bride, in respect of the same, and of the buildings erected thereon, and paid their rates until 1825, when a new and higher assessment having been made, they objected to the rate, and claimed a total exemption. The question for the opinion of this court was, whether the said land, comprizing the said space of 22,642 superficial feet, the said wharf and premises, and the said buildings erected thereon, and which are assessed in the said rate upon the annual rental or value of 400*l.*, are liable to be rated to the relief of the poor of the said parish of St. Bridget, otherwise St. Bride? If the court should determine that the said last-mentioned wharf and premises, and the said buildings erected thereon, are liable by law to be rated to the relief of the poor of the said parish, the said rate is to be confirmed; but if they should be of opinion that the said last-mentioned premises are not liable to be so rated, the said rate is to be confirmed as to the sum of 60*l.* upon the annual rental or value of 800*l.*, and to be amended by striking out of the said rate the annual rental or value of 1200*l.*, and inserting instead thereof 800*l.*, and by striking out the sum of 90*l.* so assessed as aforesaid, and inserting instead thereof the sum of 60*l.* Lord Tenterden, C. J. “The question in this case is, whether certain property built on land embanked in pursuance of the statute 7 Geo. III. c. 37, is to be exempt from poor rates?

That act contemplated an undertaking likely to be productive of public benefit, and certain inducements were held forth to the city to carry it into execution, and it provided, that the land so embanked should vest in certain persons 'free from all taxes and assessments whatsoever,' and the question is, whether by those words the land is exempt from poor rates? It has already been decided that it is exempt from the land tax, and I know not upon what principle that decision could proceed, if it be not exempt from poor rates also. It is said that an aggregate sum was imposed upon the district for land tax, which was afterwards subdivided amongst the individuals having property there; and that it was immaterial to government how the division was made, provided the whole sum was raised. It was also said, that the act of parliament being in its nature private must be considered as a bargain between those who were parties to it, and that the city at large might in expectation of benefit from the embankment have consented that the land should not bear any part of the land tax. But that argument is equally applicable to the present case. The poor may be substituted for the government; the whole sum to be raised for them is first calculated; and the amount to be raised remains the same whatever be the property in the district liable to contribute. Again, the embankment might be beneficial in a peculiar manner to the parish as well as to the city at large, and the inhabitants of the parish might, on that account, agree that it should be exempt from poor rates. If the premises in question were exempt from this burden by the 7 Geo. III. c. 37, I think that no alteration has been made by the 39 Geo. III. and 7 Geo. IV.; for the object of those statutes was only to provide a new mode of making and raising assessments for the relief of the poor, and not to bring in any new matter as the subject of assessment which was not so before they passed. They merely enumerate more specially the same descriptions of property that were mentioned more generally in the stat. 43 Eliz. The recent acts were passed alio intuitu, and we ought not in justice, as we are not bound by any rule of law, to make them applicable to any new thing. We were then pressed with the case of *Perchard v. Heywood* (8 T. R. 486), where it was held that houses built on this land were liable to house and window tax. But that was a very different case. The object of the tax was to raise as large a sum as possible for the use of the public, and the amount raised would have been lessened had any houses been exempted, whereas the amount raised for land tax or poor rate would not; and I think that the decision as to the land tax ought to guide our judgment on this occasion. One or two very recent cases are analogous to this. In *Chatfield v. Ruston* (3 B. & C. 863), where a private inclosure act secured to the vicar of a parish a certain yearly sum of money 'free and clear of all rates, taxes, and deductions whatsoever,' it was held that he was not rateable in respect of that sum to the relief of the poor; and in *Mitchell v. Fordham* (6 B. & C. 274), it was held that the words 'free from all taxes and deductions whatsoever except land tax,' gave the like exemption from poor rates. For these reasons I think that the premises in question are exempt from poor rate, and that the rate must be amended." *Bayley, J.* "I am of the same opinion. The cases cited by my Lord *Tenterden* are in point. Besides, the house and window tax was a new one imposed after the exemption was given; and the exemption may be considered analogous to a covenant to pay taxes which applies to old taxes or others substituted for them, but not to taxes entirely new, unless there are express words to give it such extensive operation." *Holroyd, J.*, concurred. Rate to be amended.

Page 176.—After *Rex v. Regent's Canal Company*, insert *R. v. Chelmer and Blackwater Navigation*, 2 B. & Ad. 14. Upon an appeal against a rate for the relief of the poor of the parish of Heybridge, in the county of Essex, the court of quarter sessions amended the rate by reducing the sum of 800*l.* to 187*l.* 3*s.*, subject to the following case:—By an act of the 33 Geo. III. c. 93, intituled "An Act for Making and Maintaining a Navigable Communication between the town of Chelmsford, or some part of the parish of Springfield, in the county of Essex, and a place called Collier's Reach, in or

By an act for making a navigable communication between two places therein mentioned, a company was formed and authorized to purchase lands, &c. for the use of the navigation,

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and to make and maintain the same. The act then directed that the company should be rated and charged to all parliamentary and parochial taxes, rates, and assessments for any lands to be purchased or taken, or warehouses or other buildings to be erected by them in pursuance of that act, *in the same proportions as other lands and buildings adjoining to or lying near the same were or should be rated and charged.* Held, that the company were liable to be rated for their lands and buildings at the same value as other adjacent lands and buildings, and not according to the improved value derived from them being used for the purposes of the navigation.

near the river Blackwater, in the said county," certain persons therein named and their several and respective successors, executors, administrators, or assigns were united into a company by the name of "The Company of Proprietors of the Chelmer and Blackwater Navigation," and were authorized to purchase lands, tenements, or hereditaments for the use of the said navigation, and for other the purposes mentioned in the act, and to make and maintain navigable and passable for boats, barges, and other vessels, the said navigation through the several parishes therein mentioned. And in the same act it is provided "that the said navigation, or any works whatsoever to be made by virtue of the powers of this act, shall not be subject to the control, direction, survey, or order of any commissioners of sewers, or to any law or statute relating to sewers, any thing herein contained, or any former law or statute to the contrary notwithstanding. And the said company of proprietors shall and may from time to time hereafter be rated and charged to all parliamentary and parochial taxes, rates, and assessments, for or on account of any lands or grounds to be purchased or taken, or of any warehouses or other buildings to be erected by them in pursuance of this act, *in the same proportions as other lands, grounds, and buildings adjoining to or lying near the same are or shall be rated and charged.*" In pursuance of the powers of this act, the company of proprietors made and completed the navigation before described, by deepening and cleansing, and in some places widening the channel of the river Blackwater, and by occasionally making cuts or deviations from the line of the river. These additional cuts, and the towing-paths along the whole line of navigation, were made upon lands purchased and held by the company under the powers of the act. It was admitted on the hearing of the appeal, that for these new cuts and the towing-paths, or the profits arising from them exclusively, and not for any profits arising from the old bed of the river, the appellants were rateable. In the parish of Heybridge the new cut leading to what is termed the sea-basin is something more than a mile and a half in length. In the other parishes through which the navigation passes the new cuts are of much less magnitude than in the parish of Heybridge, having been taken for the purpose of making locks and wears, the expenses of keeping up which are much greater than the profits accruing to the company in those respective parishes, from the land so taken, exclusive of the old bed of the river. If the company were to be rated for the new cuts, and for the wharfs and buildings occupied by them in the parish of Heybridge, according to the profits arising to them therefrom within the parish, the court found the sum of 187*l.* 3*s.* ought to be the sum inserted in the rate instead of 800*l.* But if the company were to be rated for their new cuts, wharfs, and buildings in the parish, without reference to navigation profits, in the same proportions as other lands, grounds, and buildings adjoining thereto in the parish of Heybridge, then the court found that the sum of 35*l.* ought to be inserted in the rate instead of 800*l.* The question for the opinion of the court was, whether the appellants were exempt from any rateability in respect of the land taken and used by them for the purposes of the navigation as aforesaid, beyond the value of the adjoining land? If so, then the sum to be inserted in the rate was to be reduced to 35*l.*; otherwise to stand at 187*l.* 3*s.* Lord Tenterden, C. J. "The question in this case is upon the meaning of the words, 'in the same proportion as other lands, grounds, and buildings adjoining to, or being near the same, are or shall be rated or charged;' whether, in assessing the lands and buildings of the company, their value is to be estimated according to the value of other adjoining lands and buildings, or the assessment is to be made upon that proportion of the actual value (say three-fourths or four-fifths) upon which the other lands and buildings are assessed. I propose to consider the matter, first, without reference to any of the cases that bear upon the question; and secondly, with reference to those cases. The first thing that strikes the mind upon the latter construction of the act is, that it supposes the legislature to have contemplated, that property is not rated according to its actual value, but according to some part only of that value. In fact, this mode of rating is sometimes adopted; but I conceive the law generally assumes that all rateable property is to be rated according to its

actual value. The statute of Elizabeth does not point to any other estimate. If all the property of the same kind in a parish is rated only upon some definite part of its actual value, the effect is the same as if the rate were upon the entire actual value, and no occupier of such property has any ground of complaint. If, in making the assessment, the rent is first considered, and then the rate upon land is made on a certain part of the rent, and the rate upon houses on some greater part of, or the whole rent, which is sometimes done, this is not properly a rating upon a part only of the value, but upon all the supposed real value; because, in estimating the value of land, it may be reasonable to make a greater deduction from the rent than is made from the rent of houses, on account of the greater expense (of cultivation and repairs) in the case of lands than in the case of houses. The act of parliament upon which the question arises, was passed for the purpose of making a river navigable. It was foreseen that this object could not be effectually accomplished without making, in some places, new cuts and channels deviating from the ancient course of the river, erecting locks or wears in some places to overcome the inconvenience of natural falls and changes of level, and erecting buildings for the residence of lock-keepers or collectors of tolls, or for warehousing merchandize, and power is therefore given to the company to purchase land for these purposes. It was well observed in the argument at the bar, that the ground taken for locks or wears would be productive of no value in the hands of the company, there being no lockage dues, but only a mileage toll. The company are not rateable in respect of the ancient course of the river, for the soil thereof is not vested in them, nor are they properly the occupiers thereof, but entitled only to the privilege of using it in the nature of an easement. No rate can be imposed upon tolls *eo nomine*, so that if there should happen to be in any parish no new cut or channel made, nor any profitable building erected, but land should be bought for locks and wears which are in themselves unprofitable, it might be contended that the company would not be rateable at all for the land so taken, and the rateable property in the parish would be *pro tanto* diminished, and the parish therefore would lose by the project authorized by the statute; while in another parish where land should be taken for a new cut or channel, or the erection of a profitable building, the amount of the mileage toll for passing along such new cut or channel, or the profit of the building, might be greater than the value of the neighbouring land, or the profit of similar buildings, and in this instance the parish would gain by the project. Whereas, if the land taken and buildings erected throughout the whole line are estimated and rated according to the value of the adjoining land and similar buildings, no parish will either lose or gain by the project, but every parish will be in the same situation as if the act had not passed, or nothing had been done under it. So, also, if the whole undertaking should prove unprofitable, as some projects of this kind have done, and the amount of the mileage toll, or receipts of the buildings erected, should be less than the value of the neighbouring land or of similar buildings, no parish would become a loser by the diminution of the value of rateable property within it, at whatever period of time such diminution might happen to take place. And if we suppose the legislature to have intended to prevent loss or gain to the parishes, and to leave all in the same state and condition as if no land were taken or building erected by virtue of the act, we must construe the words in question to mean, that the land and buildings of the company shall be estimated for the purpose of rates according to the value of other land and buildings adjoining or near: that the value shall be taken according to that rule, without regard to any increase or diminution of actual value. And the words used may certainly very well admit of this sense and construction. It may be observed, also, that this is an affirmative clause of the act, intended to designate the rating; and if it mean only that the company shall be rated on the same part of the value of their property as the adjoining lands and buildings, it will be quite useless and ineffectual, because a rate on a different part, whether greater or less, would be bad, being manifestly unequal and unjust. The two cases of the *Grand Junction Canal* and *St. Peter the Great* are plain authorities in favour of it, there being no substantial difference in

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Proprietors of a navigation, question where rateable by the construction of certain local acts.

the language of the statutes. In this case, therefore, the rate must be reduced to 35*l.*, that is, to the value of the land and buildings of the company, estimated according to the value of the adjoining lands and buildings, and not according to their actual productive value to the company." Rate reduced accordingly.

Page 194.—After *Rex v. Trent and Mersey Navigation Company*, insert *Rex v. Barnby Dun*, 4 Nev. & Man. 436. Appeal of poor-rate quashed by sessions, subject to the following case;—The river Dun navigation commences in Tinsley, two miles east of Sheffield, and proceeds in an easterly direction down the course of the river Dun to Holmstile in Doncaster, and thence in an easterly direction, through the township of Barnby Dun, to Fishlock Ferry, whence it communicates with the river Ouse. By 12 Geo. I. c. 38, "for making the river Dun navigable from Holmstile in Doncaster, to Tinsley, a township near Sheffield," certain persons were appointed undertakers of the navigation, and empowered to make the river navigable from Holmstile to Tinsley, to make new cuts through the adjoining lands, and to receive certain rates and duties of tonnage. By 13 Geo. I. c. 20, "for improving the navigation of the river Dun from Holmstile to Wilsick House, in the parish of Barnby Dun," similar powers are given to certain other persons as to this part of the river. By 6 Geo. II. c. 9, the two navigation companies are united into one by the name of "The Company of Proprietors of the Navigation of the River Dun," and all powers given to the separate navigation companies are vested in the united company. In this act is the following clause:—"And be it further enacted, that the said company of proprietors, their successors or assigns, or any of them, *shall not be taxed or assessed for the same, or the profits thereof, at any place or places except Sheffield or Doncaster aforesaid;*"—at which places it was further provided that books of accounts should be kept. Under 13 Geo. II. c. 11, "for improving the navigation of the River Dun from Wilsick House, in the parish of Barnby Dun, to Fishlock Ferry," the navigation was continued to its present eastern extremity, and the Stainforth Cut (176 yards of which are in Barnby Dun) was made. By 2 Geo. IV, c. xlv., reciting that it would be advantageous to abandon the existing navigation in certain parts, and to make and maintain other cuts or canals in lieu thereof, the company are empowered to make certain cuts or canals, with proper towing paths, and, among others, a cut or canal from the lower end of an existing cut at Barnby Dun, to the upper end of Stainforth Cut: And in consideration of the expenses of making such cuts &c., the company were authorized to demand and receive certain rates and duties over and above all other rates and duties allowed to be taken by the former acts: And it was enacted, "that the intended cuts or canals, alterations and works, should be considered and taken as part of the navigation of the river Dun, and that all and every the provisoes, directions, restrictions, penalties, and forfeitures, in and by the thereinbefore recited acts (*viz.* the acts above-mentioned) and every of them, respecting the boatmen employed on the said river, the owners, commanders, masters, or rulers of boats, keels, or vessels, or other persons employed thereon, or passing the locks of the said river, or making obstructions thereon, or in any other respect relating thereto, or for the benefit or protection of the said navigation, and all other *powers and authorities* therein contained, should extend and be applicable to the said cuts, &c. as fully in every respect as if the said cuts, &c. had originally been part of the river Dun navigation, and had been inserted in the several acts." Under this act, the new cut in Barnby Dun was completed in 1830. The navigation company is thus rated in the rate appealed against, the rate being at one shilling in the pound upon a sum of 173*l.* 5*s.*:—"The river Dun Company's new cut or canal, land covered with water, basins, towing paths, locks and tolls, and other works." No objection is made by the appellants to the amount at which they are rated, and indeed it is admitted that the rate is fair, supposing that the company are liable to be rated at all. The township of Barnby Dun is co-extensive with the parish. The navigation

through the township consists entirely of land, the length of the several parts of it being as follows:—The old cut 308 yards, the new cut 3498 yards, part of Stainforth cut 176 yards, total in Barnby Dun 3982 yards, nearly two miles and a quarter. The bed of the river is not used as a navigation. Previous to the completion of the new cut the company had been rated, and had paid rates in Barnby Dun upon a sum of 66*l.* 5*s.* Upon the completion of the new cut, the company were rated upon 173*l.* 5*s.*, upon which assessment they have paid one rate. The company also, in December, 1831, paid a highway composition in Barnby Dun upon the same assessment. Land was purchased by the company for making the new canal in Barnby Dun. The company is rated, by mutual agreement, in the adjoining township of Kirk Sandal, upon 90*l.* It is also rated in the adjoining township of Stainforth and in other townships. It is not rated in Sheffield;—indeed no part of this navigation is in the township of Sheffield, neither is it rated in the township of Tinsley, where it terminates. It is rated in the township of Doncaster upon 247*l.* 10*s.* The entire length of the navigation of the river is thirty miles, of which length at least twelve miles are canals or cuts. The questions for the consideration of the court are, first whether the company is liable to be rated in the township of Barnby Dun at all; and, secondly, if so liable, upon what sum, or in what manner, ought it to be rated in that township? Lord Denman, C. J. “I confess that a good deal of doubt has existed in my mind in the course of this argument. I am so very unwilling that any of these cases should be decided on general views of utility, which may vary in every court before which cases happen to come, that I am extremely anxious to see how the *words* of the statute will decide the case; and I think that the words of this statute are sufficient to decide that this company is exempt from the payment of rates in respect of the land in question, which land was taken under the powers of the act of 2 Geo. IV. It is true that words could hardly be less pertinent for the purposes which they really meant to carry into effect, than those employed in the first section of 6 Geo. II. giving the exemption itself. They say, “That the company of proprietors, their successors or assigns, or any of them, shall not be taxed or assessed for the same, or the profits thereof, at any place or places, except Sheffield or Doncaster aforesaid,” (those places at which the accounts were to be made up; but I think I cannot in any way connect the rateability with the mere making up of the accounts.) It seems to me, that though there are no words immediately preceding that clause, which can be properly referred to by the words “same or the profits thereof,” yet we are bound to suppose the legislature must have meant by the words “same” such of the before-mentioned articles as were capable of producing profits that might be rated. In that sense we must hold that the words “taxed or assessed for the same” refers to the *navigation* which was regulated by this act of parliament. Then the question is, whether the exemption so given is extended by 2 Geo. IV. to those lands which the company is enabled to take for the purposes of that act? The object of that act is to enable the company to “abandon the existing navigation in certain parts, and to make other cuts in lieu thereof;” and the company are empowered to make such cuts, with proper towing paths and so forth, and among others the cut in question. Then in consideration of the expense the company shall be at in making the new cuts &c., they are allowed to take certain additional rates and duties; and then it is further enacted, that the intended cuts and canals, alterations and works, shall be considered and taken *as part of the navigation of the river Dun*. Then there are other words, as to the effect of which I think very considerable doubt may be entertained. These first words, however, appear to me to be sufficient to establish the right of the company to exemption in respect of their newly-acquired lands, just in the same way as if they had possessed them under the act containing the original exemption clause. For, when it is said “that the said intended cuts &c., shall be considered and taken as part of the navigation of the river Dun,” we are then bound to say, that these cuts, being a part of the navigation of the river, the privileges of exemption, which the company possessed in respect of the

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original works, are conferred upon them in respect of those which are substituted. [The Solicitor-General suggested that there were parts of the navigation made between 6 Geo. II. and 2 Geo. IV. which were admitted not to be exempt, and which had always been rated.] At present the question is confined to the lands that were taken under 2 Geo. IV. and I am proceeding on the principle that those lands are distinctly substituted for, and put in the same situation as the lands that were exempted under the original statute. It seems to me, therefore, that the sessions have done right in quashing the rate, and that we must confirm their order." *Littledale, J.* "I am of the same opinion. It seems to me that the original exemption in 6 Geo. II. is sufficiently extensive to exempt this land from poor-rates, except so far as they are to be taken in Sheffield and Doncaster. It seems to be admitted that the words, "taxed, or assessed" are sufficient to exempt from poor-rates, as was decided in *Rex v. London Gas Light Company*. If that be so, the question is as to the construction of 2 Geo. IV. which authorizes the company to abandon certain parts of the existing navigation, and to make new cuts, &c., in lieu thereof. It appears to me, that as this cut was merely a substitution for what was before exempted, it ought to be governed by the same rules, and subject to the same exemptions. I do not mean to say that this would be so, if there were no clause in 2 Geo. IV. enacting that the intended cuts &c. should be considered and taken as part of the navigation of the river Dun, &c. It is admitted that this clause does not in express words confer any exemption, but the question is, whether the effect of the whole of those words taken together, though the particular word is not used, does not give an exemption? It seems to me, that it gives exactly the same exemption as the previous statute gave as to the original works. Though, generally speaking, where the parish are entitled to rate any portion of land, that right is not taken away, unless there be some express reason for it, I do not apprehend that it is necessary to use in distinct terms the word "exemption." If, upon a fair construction of the act, the exemption appears, the right of the parish to rate the particular land is effectually taken away, though the word "exemption" be not used. It seems to me, therefore, that as this cut is a substitution for the bed of the river, it is governed by the same rules as the original navigation, and that the company are exempt." *Williams, J.* "I am entirely of the same opinion. I agree that it is not desirable in these cases to attempt to lay down any general rules, because the question must depend upon the language of the acts of parliament in each case. It is undoubtedly true, that it is incumbent on the appellants to show that by some express clause they are protected from rateability; otherwise it would follow as a matter of course that the statutory liability would be imposed upon them, and they would be subject to be rated for this cut. Therefore, the matter comes to this single question, whether the two acts of parliament taken together do constitute that exemption? The words, "the same, and the profits thereof," which are found in the clause of 6 Geo. II. can with no propriety be referred to any thing but the navigation. This clause must, in my opinion, be understood as constituting an exemption from being assessed to the poor-rates in the township of Barnby Dun. Then comes the second question namely, Whether the new works, made under 2 Geo. IV. are in like manner exempt? and I own, if the question had stood upon those general words, "provisoos, directions, instructions, penalties, forfeitures," &c., there not being introduced into the clause the word "exemption," I should have had great difficulty in saying that these words touched the question of exemption from taxes or assessments. But it seems to me to be quite clear, from the other words which have been referred to, that the intended cuts, &c., did, when they were made, become identical with the original navigation of the river Dun. This consideration disposes of the question; and I am of opinion, that as the original navigation was exempt, so also are the substituted cuts and canals." Order of sessions confirmed.

An inclosure act provided that certain allotments for

Page 205.—After *Rex v. Sculcoates* insert *Rex v. Pitt*, 5 B. & Ad. 565. Appeal against a poor rate for the township of Kyo, confirmed by the sessions,

subject to the following case:—By an act of parliament, 40 Geo. III. c. 25 (private) intituled “An Act for dividing, allotting, and inclosing a Common called Tanfield Moor, in the Parish of Chester-le-Street, in the County of Durham,” after reciting that the Marquisses of Bute and Hertford, and the Earl of Windsor, were seised of or entitled to the soil of the said common, and to the quarries of stone, and all other mines and minerals, except the coal mines and seams of coal within and under the same, as tenants in common, in the shares and proportions therein mentioned, and that W. M. Pitt, Esq. was seised of or entitled to the collieries and coal mines, and seams of coal, as well opened as not opened, lying and being within and under the said common, together with certain liberties in and over the same for the winning, working, managing, and carrying on the said collieries, and for leading and carrying away the coals; and that certain persons therein named, and several other persons, as owners of messuages, lands, tenements, and hereditaments, were entitled to right of common in and upon the said common, it was enacted that the commissioners therein named, after deducting so much of the said moor or common as was by the said act directed to be set out for public highways, roads, and drains, and for a common quarry or quarries, common watering places or wells, should set out, allot, and appoint unto and for the said Marquisses of Bute and Hertford, and Earl of Windsor, one full sixteenth part in value, (quantity, quality, and situation considered), of the said residue of the said common as a compensation for their right to the soil of the said common or moor, and for their consent to the division and inclosure thereof, which said sixteenth should be deemed, and was thereby declared, to be within the township of Tanfield; and after the said sixteenth part should be so set out and allotted, should set out and allot the remaining part of the said common unto and among the several persons having right of common upon the said common, in proportion and according to the rents or values of their respective messuages, lands, or tenements in respect whereof they were severally entitled thereto as aforesaid, in the proportions therein mentioned. And it was further enacted, “that all the allotments to be set out to the several persons having right of common upon the said moor or common, should be deemed and were thereby declared to be situate within and parcel of the same townships and places respectively wherein the lands or estates lie in respect of which such allotments should be made.” And it was enacted, “that all such lands and grounds as should by virtue of the said act be allotted to any person or persons for or in right of their respective messuages, mills, lands, or tenements, should be held by such person or persons respectively in the same manner, and should be of the same nature and tenure as their respective messuages, mills, lands, or tenements, in right or in respect of which such allotments should be made, were holden respectively.” And it was also enacted that nothing therein contained should be construed to defeat, lessen, prejudice, or anywise affect the right or interest of W. M. Pitt, his heirs or assigns, of, in, and to the coal mines and seams of coals, as well opened as not opened, within and under the said common, but that the said W. M. Pitt, his heirs and assigns, should for ever thereafter have, hold, work, and enjoy all and every the coal mines and seams of coal, as well opened as not opened, lying and being within and under the said common. Pursuant to the said act, the common was divided, allotted, and inclosed. At the time of the passing of the act the whole of the common was situated within the chapelry of Tanfield. The lands or estates in respect of which allotments were set out are of various tenures, some being freehold, some copyhold, and some leasehold; and several of such lands or estates are situate within the township of Kyo, and other adjoining townships; and by the clauses in the said act before stated, such allotments became and now form part of the respective townships in which the lands or estates, in respect of which such allotments were set out, are situated, and are of the same natures and tenures as such lands or estates in right or respect of which they are respectively holden. Previous to and for some time after the said division, the coal under the said common was rated to the relief of the poor of the chapelry of Tanfield; but

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rights of common should be deemed to be situate within the townships in which the commonable lands lay, but nothing therein was to affect the right to coal mines under them: Held, that the coal mines were rateable the same as before the act passed.

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some time ago, the coal under the allotments set out in respect of estates in the township of Kyo, and also in another adjoining township, was rated to the poor rates for those townships. The coal mines for which the appellant was rated are within and under allotments of the said common, allotted in respect of lands situate within the township of Kyo. *Denman, C. J.* "The allotments to be set out to the several persons having right of common are to be transferred to the townships and places wherein the lands lie, in respect of which such allotments are made. Now, first, it does not appear that Pitt had any right of common. The soil is reserved to him in all respects as it was before the act, and his coals were then in the chapelry of Tanfield. Then the words of the enacting clause cannot have the operation contended for." *Parke, J.* "Before the act, the coal and soil were all in the township of Tanfield. By the act of parliament, the allotments set out to the several persons having right of common are taken out of that parish, and are to be deemed situate in the townships and places where the lands lie, in respect of which the allotments are made: what is allotted to the commoners, and no more, passes out of the township. The coals were not allotted to the commoners; the commissioners only set out the surface of the soil, which does not include the coals. It is expressly enacted that Pitt's right in them shall not be affected; but it would be so by the transfer contended for." *Taunton, J.* "The land substituted for the right of common is made of the same tenure and quality, and is to be deemed as having such local situation, as the land in respect of which such right of common originally existed; that is the whole enactment; and it has nothing to do with the coal. Pitt's right is expressly reserved in all particulars. I have not the smallest doubt that the coals are rateable in the same place as they were before the act. This was the construction first put upon the act, for the coals were rated in Tanfield. Why that was changed, I cannot say. The first construction was right." *Patterson, J.* "I agree in the general doctrine, that the owner of the surface is the owner of the soil, down to the centre; but the question here turns on the meaning of the word allotment. The act says that the allotments to the commoners shall be deemed to be situate in the place wherein the land lies, in respect of which they are made. Now what is allotted? Not Mr. Pitt's coal mines, for his rights in them are expressly reserved. It is quite clear, therefore, that the locality of his coal mines is not operated upon by the act. Order of sessions quashed.

Application to sessions for the repayment of money where too high a rate is levied, under 41 Geo. 3, c. 23, must be made either to the sessions at which the appeal was heard, or at which the rates were reduced.

Page 218.—After *Rex v. Essex* insert *Rex v. Justices of St. Peter's Liberty, York*, 4 B. & Ad. 342. In August, 1828, the undertakers of the Aire and Calder Navigation were rated to the relief of the poor of the township of Brotherton, in the West Riding of Yorkshire, in the sum of 150*l.* on a total annual value of 2000*l.* as "the owners and occupiers of a cut or canal, and that part of the river Aire lying within the township of Brotherton, the dams, locks, and weirs, tolls, dues, &c." They appealed against the rate at the October sessions, and the appeal was entered and respited until the Christmas sessions, but the overseers of Brotherton had no notice in writing of the entry and respite, and in December they distrained a vessel belonging to the company for the amount of the rate. The company, to prevent the vessel being sold, paid the 150*l.* under a protest, and 13*l.* 3*s.* 3½*d.* costs. At the Christmas sessions the appeal was heard, and a case granted for the opinion of the Court of King's Bench; and that court, on hearing the argument in Trinity term, 1829 (9 B. & C. 820), decided that the company were not rateable in respect of the river, and sent the rate back to the sessions to be amended by striking out that part. While this appeal was pending, other rates were made on the company for the same amount, and in the same terms, and appealed against; and on the hearing of an appeal against one of these rates in January, 1830, the sessions amended the same by striking out the words "and that part of the river Aire," subject to the opinion of the Court of King's Bench on the question whether the company were rateable for dams on the river; and that court on the 21st of January, 1832 (3 B. & Ad. 139), made a rule that the rate should be sent back to be amended by

reducing it from 150*l.* to 15*l.* 16*s.*, the amount chargeable on the canal and lock. At the April sessions, 1832, the rates were reduced from 150*l.* to 15*l.* 16*s.* pursuant to the rules of court. A demand was afterwards made on the overseers of Brotherton for the difference in amount between the sums due from the company on the rates as ultimately amended, and the sums paid to the overseers of Brotherton, under the distress in December, 1828, and afterwards upon the subsequent rates. At the October sessions, an application was made by the company for an order of sessions on the overseers to refund the sums of money so paid to them, after deducting the amount of the several rates chargeable. That court refused to make any order, on the ground that the application ought to have been made at the April sessions, when the rates were altered. A rule nisi had been obtained for a mandamus to the justices to make the order. *Denman, C. J.* The motion ought to have been made either to the court of quarter sessions which heard the appeal, or to the court which ordered the sums rated on the company to be decreased or lowered. The application here was too late." *Littledale, J.* concurred. *Taunton, J.* "The court of quarter sessions had no power to order money improperly paid to overseers to be refunded until this statute gave it them; and the statute limits the power to the court of sessions which heard the appeal, or at least to the court which orders the sums rated on any person to be lowered. No application was made in this case to either one or the other." *Patteson, J.* concurred. Rule discharged.

Priestley v. Watson, 2 *Crom. & Mees.* 691. Assumpsit by the plaintiff, as clerk to the undertakers of the Aire and Calder Navigation, against the defendant, an overseer of Brotherton, for money had and received by the defendant, to the use of the undertakers, and on an account stated. Plea—the general issue. At the trial before *Alderson, J.*, at the Spring Assizes for the county of York, 1833, the jury found a verdict for the plaintiff for 163*l.* 3*s.* 3½*d.* Case:—On the 15th August, 1828, the overseers of the poor of the township of Brotherton, in the county of York, of whom the defendant was one, duly made and published a rate for the relief of the poor of the said township, in which they rated the said undertakers at the sum of 150*l.* in respect of property of the annual value of 2000*l.* Against this rate the said undertakers entered an appeal at the October sessions, 1828, which appeal was respited till the following sessions in January, 1829. On the 15th December, 1828, after summons and refusal to pay, a distress was duly made by the said defendant, who was one of the overseers of Brotherton, on a vessel belonging to the said undertakers, for 150*l.*, being the amount of the said rate; and, to prevent a sale, the sum of 163*l.* 3*s.* 3½*d.*, being the amount of the said rate and of the expenses of the said distress, were paid to the defendant, being still overseer of the poor, who was at the same time served with the following written protest signed by the company's clerk, and expressed to be on behalf of the undertakers of the Aire and Calder Navigation:—

"I do hereby tender you the sum of 150*l.*, for which you have distrained the goods and chattels of the said undertakers, and also the sum of 13*l.* 3*s.* 3½*d.*; for costs of distress, making together the sum of 163*l.* 3*s.* 3½*d.*; but I do on their behalf hereby protest against your right to recover the same by the illegal distress you have made; and I do hereby give you notice that an action will be brought for restitution and for damages. Dated 15th December, 1828."

And the defendant on that occasion gave a receipt for the said sum of 163*l.* 3*s.* 3½*d.*, of which the following is a copy:—

"Received, the 15th December, 1828, of the Aire and Calder Navigation (by payment of J. P. S.) the sum of 150*l.* claimed and distrained for by the township of Brotherton for poor-rates, upon the undertakers of the said navigation, together with 13*l.* 3*s.* 3½*d.* for costs attending the distraining the same:—

£150	0	0
13	3	3½
£163	3	3½

(Signed)

E. W., one of the overseers of the poor of the said township of Brotherton."

Where an overseer distrains for a rate, not knowing there is an appeal against it, and immediately pays over the money so levied to a guardian under 22 Geo. 2, c. 83, and the rate is afterwards lowered on the appeal being heard, the overseer not being a wrong-doer will not be liable in money had and received.

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At the January sessions, 1829, the rate was confirmed by an order of sessions, subject to a case for the opinion of the Court of King's Bench; and, whilst the decision of this case was pending, viz., on 27th March, 1829, another rate was made by the overseers of the said township of Brotherton, in which a similar charge was made on the said undertakers in respect of the same property, assessed at the same annual value of 2000*l.*; against which rate the said undertakers appealed to the then next sessions, which appeal was respited; but before the following sessions, viz. in Trinity Term, 1829, the Court of King's Bench ordered that the order of sessions confirming the rate of the 15th August, 1828, should be quashed, and the said rate amended by an order, of which the following is a copy:—

“ King's Bench.—Wednesday next after three weeks of the Holy Trinity, in the tenth year of King George the Fourth.

“ Liberty of St. Peter's, York.—*The King v. The Undertakers of the Aire and Calder Navigation.*—Upon hearing the counsel on both sides, it is ordered that an order of sessions made on the appeal of the defendants against a rate or assessment made for the relief of the poor of the township of Brotherton, in the west riding of the county of York, and within the liberty of St. Peter's, York, be quashed for the insufficiency thereof, and that the sessions do amend the said rate by striking out therefrom the assessment made upon the defendants in respect of that part of the river Aire which lies within the said township of Brotherton. And it is further ordered, that the defendants have leave to give a new notice of appeal against the said rate or assessment, and to specify therein, if they think fit, any new ground of appeal against the said rate or assessment.”

At the July sessions, 1829, the appeal against the rate of the 27th March, 1829, was heard, and that rate was amended by increasing the assessment on the annual value of the rateable property of the said undertakers in the said township from 2000*l.* to 2010*l.* 2*s.* 8*d.*, and an order of sessions was made accordingly, subject to a second case for the opinion of the Court of King's Bench. The overseers of the poor of the said township, however, continued, until the determination of the Court of King's Bench on such second case, to make rates for the relief of the poor, in all of which the said undertakers were rated upon property assessed at the annual value of 2010*l.* 2*s.* 8*d.*; and the said undertakers continued to appeal against each of such rates to the quarter sessions. At the January sessions, 1830, the appeal against the rate of August, 1828, was respited to the next sessions, no notice having been given to the sessions of the order of the King's Bench of Trinity Term, 1829, hereinbefore mentioned. No further notice of that appeal appears in the records of the sessions, nor any other respite thereof during 1830, 1831, nor until the Easter sessions, 1832. At the Easter sessions, 1832, the rate of the 15th August, 1828, and all the subsequent rates, were amended by reducing the annual value of the rateable property of the said undertakers in the said township to 15*l.* 16*s.* Upon such reductions the amount of all the before-mentioned rates, payable by the said undertakers to the overseers of Brotherton, was 12*l.* 0*s.* 6*d.* only. The said undertakers made no application at the July sessions, 1832, for any order directing the overseers of the township of Brotherton to refund to the said undertakers the sum of money so paid to the said defendant as aforesaid, deducting the said sum of 12*l.* 0*s.* 6*d.*, nor was any entry made, nor any proceeding had respecting the said rate; but on the 12th October, 1832, the following notice was served on the defendant:—

“ To the Churchwardens and Overseers of the Poor of the township of Brotherton, in the liberty of St. Peter of York, in the west riding of the county of York, and every of them, and especially to Edward Watson and Walker Smith, and to each of them.

“ As the solicitor and law agent, and on behalf of the undertakers of the navigation of the rivers Aire and Calder, in the west riding of the county of York, I hereby demand of you to repay and return to the said undertakers the sum of money which was paid to you by the said undertakers or their

agent, on or about the 15th day of December, 1828, as the amount of a certain rate or assessment bearing date the 15th day of August, 1828, for and towards the necessary relief of the poor of the said township of Brotherton, rated and assessed upon the said undertakers as owners and occupiers of a cut or canal, and that part of the river Aire within the township of Brotherton, dams, locks, and weirs, and tolls, dues, or rates, and the costs, charges, and expenses of putting into execution a warrant of distress for the same rate, bearing date on or about the 22d day of November, 1828, under the hands and seals of Henry John Dickins, Esq., and Dauson Richardson Currer, clerk, two of his Majesty's justices of the peace in and for the said liberty, after deducting thereout such sum and sums of money as are due from the said undertakers for the rates or assessments rated and assessed upon them in respect of their property in the said township of Brotherton, and which have been amended and reduced by the general quarter sessions in and for the said liberty, in pursuance of the order and direction of his Majesty's Court of King's Bench in that behalf; and also take notice, that in case you shall refuse or neglect to pay the same to me, or to Mr. Joseph Priestley, at the office of the said undertakers in Wakefield, within six days from the service hereof, an application will be made to the next general quarter sessions of the peace to be holden for and in the said liberty on the 20th day of October instant, as soon as counsel can be heard, for an order of the said court to be made upon you, the churchwardens and overseers of the poor of the said township of Brotherton, to repay and return to the said undertakers all such sum and sums of money as they ought not to have paid or been charged with; and also to pay to the said undertakers, or their said agent, all costs, charges, and expenses occasioned by their having paid, and having been required to pay the said sum of money so wrongfully charged upon them as aforesaid, in respect of the said rate or assessment above mentioned. Dated 11th October, 1832. SAMUEL HAILSTONE."

The said undertakers accordingly made an application at the following October sessions, 1832, for an order directing the overseers of the said township of Brotherton to refund to the said undertakers the said sum of money so paid to the said defendant as aforesaid, deducting therefrom such sum as was due according to the said amended rates; which application was refused by the said justices at the said sessions. In the years 1826 and 1827, and from thence to the time of the distress, between two and three pounds, but never more than five pounds a-year, had been collected for poor-rates from the said undertakers by the overseers of Brotherton, but no rate-books were produced at the trial previous to August, 1828. The defendant Watson was one of the overseers of the poor of Brotherton for the years 1828, 1829, 1830, 1831, and 1832 respectively, but with different coadjutors in each of these years. The township of Brotherton, long before and since August, 1828, adopted the provisions and complied with the requisites of 22 Geo. III. c. 83, commonly called Gilbert's act, and the said sum of 150*l.*, on the same day that it was received, was paid over by the defendant to W. Smith, the guardian of the poor of the township of Brotherton, appointed under that act before the rate was made, and who had continued to be so up to the time of his receipt of the money, and was so at the time of the action brought. The money so paid was appropriated by the guardian to the fund for the general relief of the poor of the township, and had been expended before the 12th of October, 1832. The question for the opinion of the Court was, whether under the above circumstances the plaintiff was entitled to recover the said sum of 163*l.* 3*s.* 3½*d.*, or any and what part thereof.

The points stated for argument on the part of the plaintiff were, that the undertakers of the navigation were entitled to recover the whole amount for which the verdict was entered, as a payment made under compulsory process, which was subsequently determined to be illegal, deducting only the sum of 12*l.* 0*s.* 6*d.*, the amount of all the amended and reduced rates.

On the part of the defendant.—First, that the money was paid to the defendant as overseer of the township of Brotherton, and by him immediately paid over to the guardian of the poor of that township, pursuant to the stat. 22 Geo. III. c. 83, s. 7, 8; secondly, that it did not appear that the distress

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was illegal, and that the defendant was within the stat. 41 Geo. III. c. 23, s. 1, 2, 3, 4, & 8; thirdly, that the plaintiff had neither proved a demand of the perusal and copy of the warrant of distress, nor that the action was commenced within six months after the act committed, pursuant to the 24 Geo. II. c. 44, s. 6 & 8.

Lord Lyndhurst, C. B. "We are not to conjecture that a notice of appeal was given. It is essential that such notice should have been given, and, if it had been, it ought to have been proved." Alderson, B. "Under this act the defendant was bound to pay over the money to the guardian, and the action is not brought until it is paid over. It does not appear that any notice of appeal was given at the time of the levy. The defendant is not shown to be a wrong-doer, and the action, therefore, cannot be maintained." Judgment for the defendant.

Appeal to poor rate adjourned, and grounds of appeal stated, in order of respite, no further notice held necessary at the following sessions.

Page 221.—After *Rex v. Justices of Wilts* insert *Rex v. Justices of Hertfordshire*, 1 Nev. & Man. 331; S. C. 4 B. & Adol. 561. Solomon Baxter, intending to appeal against a poor rate, served his notices in due time for the October sessions in Hertfordshire, 1832, and attended there ready to try, and to prove notice. The appeal being called on, counsel appeared for the respondents, and prayed a respite, alleging that the respondents had not had time to prepare their defence to the grounds of appeal stated in the notice, which were fifteen in number. The appellant opposed the respite; but it was granted, on payment of costs. Notice of appeal was not proved, nor an admission of it required. One of the notices was handed by the respondent's counsel to the clerk of the peace, and was thereupon (as the appellant represented) filed with the records of the sessions; but the respondents alleged that it was merely furnished to the clerk of the peace for his convenience, to assist him in making out the order of respite. This order (which set forth the grounds of appeal stated in the notice) was served on the churchwardens and overseers of the respondent parish on the 21st of December; but they had no further notice of appeal. At the next sessions (31st December) the appeal was called on, and the respondents' counsel objected to its being heard without proof of the original notice. This the appellant was not prepared to give, conceiving that the fact had been admitted at the former sessions, and proof of it now was unnecessary; but he offered to prove the order of respite. The sessions held this insufficient, and confirmed the rate with costs. A rule nisi was afterwards obtained in this court for a mandamus to the justices to enter continuances and hear the appeal. *Per Curiam*. "The respondents had acted upon the notice so as to make further proof unnecessary. The sessions ought to hear the appeal." Rule absolute.

Page 235, l. 9.—Insert [The statute of Marlbridge extends to goods distrained for a poor rate, and the sheriff must replevy such goods on plaint. *Sabourin v. Marshall*, 3 Bar. & Adol. 404.]

Page 314.—After *Rex v. Birmingham*, add "and see *Rex v. Parkins*, 1 Sess. Ca. 176."

Page 320.—After *Rex v. Birmingham*, add "and see *Rex v. St. John, Delpike*, 2 B. & Adol. 226, S. P."

Held, per Coleridge, J. in the outer court, that under 4 & 5 Will. 4, c. 76, s. 72, an application for an order on the putative father of a bastard child need not in all cases be made to the first sessions after the child becomes chargeable, but must be made to the first sessions

Page 275.—Insert *Rex v. Justices of Oxfordshire*, 6 Nev. & Man. 351. In June, 1835, a fortnight before the Midsummer sessions, a young woman was delivered of a bastard child at Bletchington, in Oxfordshire. At the October sessions, the overseer of that parish went with the mother of the child to the sessions, to procure an order upon the putative father, but finding that it was necessary to be provided with corroborative evidence, he made no application then to the court, but returned to procure such evidence. At the Epiphany sessions he applied by counsel for an order, but the justices decided that the application was made too late, and refused to entertain it. Churchill, in Hilary term last, obtained a rule nisi for a mandamus to the justices, requiring them to hear the application; against which cause was shown before Coleridge, J. in the outer court. *Cur. ad. vult.* On the first day of Trinity

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at which it can be made with effect.

term, *Coleridge*, J. delivered judgment. "This was an application for a mandamus to the justices of Oxfordshire, to hear an application for an order in bastardy. The child was born previously to the Summer sessions, 1835, and the overseers gave notice to the putative father that they should apply to the justices at the Michaelmas sessions for an order. At that time, not being prepared with corroborative testimony, they made no application; but they did make an application at the last Epiphany sessions, which was refused by the justices, as being too late. There was no doubt that the child was chargeable before the October sessions, and that the father was then known. There are two conditions precedent to the application for this order,—the birth of the child, and its chargeability; and the application must be made to the sessions next after the occurrence of these events. There is a third provision, namely, "after diligent inquiry as to the father,"—which is probably to be considered as merely directory. The question then is, what is the next sessions after the birth of the child and its becoming chargeable? It was contended that the child may be said to become chargeable upon every fresh act of relief, like the case of a trespass which is continued, in which there is every day a fresh trespass. But I am of opinion that this cannot have been the intention of the legislature; for if it were, the time would be prolonged indefinitely to the end of seven years. I have considered this question with reference to the well-known provision as to appeals made against orders of removal, by which it is required that such appeals shall be made to the next sessions. That has been holden to signify that the appeal must be to the next *practicable* sessions. And I am clearly of opinion that the parish officers are not bound to apply to a sessions which could not proceed with effect to adjudicate upon the application; and therefore if the application be made to the next sessions after the child is born and after it has become chargeable, to which the overseers can apply with effect, it is sufficient. Each case must depend upon its own circumstances as to that. If the overseers have not been able, after using due diligence, to ascertain the putative father, or to discover any corroborative testimony, they would not be bound to apply to the next sessions; but, at a subsequent sessions, the justices would take these matters into consideration, and determine that those were the *next possible* sessions to which the application could be made. The provision,—as to the limitation of maintenance to six months,—in the 73d section, has been referred to, to show that the application need not be made to the very next sessions. But I think there is nothing in that argument; for that provision applies only to the *hearing*, and the *hearing* may be deferred for a long period, on many grounds; as, the absence of a witness, or many other cases which may be suggested. But the legislature, by using the word *next*, must clearly have intended some limitation as to the time of the *application*. Now, it is to be considered that the object of the legislature was to restrict the liability of the putative father, and to give him advantages which he did not before possess; but if it were to be held that the application need not be made at the next practicable sessions, but might be made subsequently, there could be no limitation but the seven years. That would be a great disadvantage to the putative father, which he did not labour under by the old law. The best rule for this court to lay down, therefore, is, that the application must be made to the next sessions, leaving a discretion to the justices to determine in each case whether, under the circumstances, it could have been made sooner with effect,—which determination will still remain subject to the revision of this court. Now in this case, applying the above doctrine, it is clear that the child was chargeable before the October sessions; the father was known to the overseers, and they did not apply to those sessions, only because, through ignorance or inadvertence, they were unprepared with corroborative testimony: but they must be taken to have known the law, and what evidence would be required. The overseers not being prepared with the requisite evidence did not apply to the next practicable sessions, and the justices at the Epiphany sessions exercised their discretion properly, in refusing to entertain the application. This rule must be discharged, but, under the circumstances, without costs."

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An application for an order under 4 & 5 Will. 4, c. 76, for the maintenance of a bastard child which had had become chargeable sixteen days before the October sessions was made to the Epiphany sessions, without good reason shown why the application had not been sooner made: Held, that the sessions had no jurisdiction to entertain it. *Quære*, whether the application must in all cases be made to the first sessions after the child becomes chargeable.

Page 275.—Insert *Rex v. Heath*, 6 Nev. & M. 345.—At the quarter sessions held at Petworth, on the 8th January, 1835, an order was made on Charles Heath, of the parish of Stopham, as the father of a male bastard child, to reimburse the parish of Stopham for the maintenance of the child, under the 4 & 5 Will. IV. c. 76, subject to the opinion of this Court upon the following case:—Eliza Penfold, of the parish of Stopham, single woman, was, on the 16th August, 1834, delivered of a male bastard child, which became, on the 29th September in the same year, chargeable to Stopham, and continued so until the making of the said order. The quarter sessions next after the 29th September, 1834, was held at Chichester, for the said county, on the 15th day of October in the same year. No application was made by the overseers of Stopham for an order on Charles Heath, in respect of the said bastard child, until the quarter sessions held at Petworth, on the 8th January, 1835, nor was any notice served on him by the overseers of Stopham, of any intention to make such application, until the 9th December, 1834. It was objected, on the part of the said Charles Heath, that the sessions held on the 8th January, 1835, had no jurisdiction to hear such application. This objection was overruled. The Court also considered that it was not necessary for the overseers to show that they had made diligent inquiry as to the father of such child, previous to the October sessions; and they held, that though the child became chargeable on the 29th September, still that the application to the Epiphany quarter sessions was in sufficient time under the provisions of the statute. Lord Denman, C. J. "The objection was taken in this case, that the Court of quarter sessions had no jurisdiction to hear the application of the overseers. Whether or not the court had jurisdiction depends on the 72d section of 4 & 5 Will. IV. c. 76. That section declares, that where an illegitimate child becomes chargeable to any parish, the overseers may, if they think proper, after diligent inquiry as to the father of such child, apply—not to the quarter sessions of the peace generally, but—to the next general quarter sessions of the peace. It is reasonable and just that there should be some limitation. The legislature evidently intended that the application should be prompt, lest the overseers should defer the application until the party charged had lost all means of proving that he was not the father of the child. Whether the period of limitation is to begin from the time when the child becomes chargeable, or the father is discovered, or after diligent inquiry as to the father, the court of quarter sessions had not, on any supposition, jurisdiction in this case." *Littledale, J.* "I am not without doubt; but, upon the whole, I am disposed to think that the 72d section requires the application to be made to the first sessions. Whether that is the sessions next after the child becomes chargeable, or next after the father is ascertained, it is not necessary now to determine. The words of the act are, that when any child shall be born a bastard, and shall become chargeable to any parish, the overseers may, if they think proper, after diligent inquiry as to the father, apply to the next general quarter sessions of the peace. I am rather disposed to think that the application ought to be made to the first sessions after the child becomes chargeable. It has been urged, that unless the father is known, it is impossible to make the application to the next sessions. The words of the statute are however plain, and we are not to put a forced construction upon plain and intelligible language. If the act is not sufficiently explicit, it ought to be amended. The sessions had, in the present case, no jurisdiction. Notice of the intended application was not given to Heath until the 9th of December. The child was born on the preceding 16th of August, and became chargeable on the 29th September. It is not stated when the overseers knew who the father was, and it does not appear that they did not know him shortly after the birth of the child, and fourteen days before the October sessions, so as to be in a situation to apply to those sessions for an order of maintenance." *Patteson, J.* "I do not see how to avoid the construction put upon the 72d section by my lord and my brother Littledale. The words are plain, and we have to right to attach a meaning to those words different from that which they ordinarily bear. These are the words of the statute, when any child shall hereafter be born a bastard, and shall by, &c. become chargeable to any parish, the overseers

may, if they think proper,' (and 'if they think proper' means that they are not bound to make the application at all,) 'after diligent inquiry as to the father of such child, apply to the next general quarter sessions of the peace.' This is plain and intelligible language. The child in the present case was chargeable on the 29th September, and the sessions were held on the 13th of the following October. Those were *prima facie* the sessions at which the application should be made. This construction is fortified by the next section, which provides that if there be not sufficient time, previously to such sessions, to give the person intended to be charged as the father of such child fourteen days' notice, the hearing of the application shall be deferred to the next sessions. This 73d section, however, is relied on as showing that by the expression 'next sessions,' is meant the first practicable sessions. Suppose a child was born and became chargeable on the 12th of October, and the sessions were held on the 14th, it may be that the overseers are not bound to make the application to those sessions. In the present case there was sufficient time to give fourteen days' notice, and whatever may be the effect of the statute where there are not fourteen days between the birth and the sessions, that is immaterial to the present question. In the present case, at all events, it lay upon the overseers to show by evidence why they did not make their application at an earlier period. It is objected that there was not sufficient time to make diligent inquiry as to the father, and that the overseers may not have known who he was. That however was not shown in evidence, and the sessions considered that it was unnecessary. For any thing that appears on the statement of this case, the overseers may have known who the father was shortly after the child was born." *Williams, J.* "I am of the same opinion. The words of the statute are plain. The case shortly amounts to this:—that *prima facie* the application was too late. That objection was taken, and the overseers did not show why they had not applied earlier. If any reasons had been shown why the application had not been made in October, that would have wholly varied the case. The January sessions were not the next, and no explanation was given why the first sessions were passed over."—Order of sessions quashed.

Page 492.—After *Rex v. St. George, Exeter*, insert *Rex v. Haughley*, 4 B. & Ad. 650, S. C.; 1 Nev. & M. 525. Upon an appeal against an order for the removal of Thomas Rampling, his wife and son, from the parish of Mendlesham, in the hundred of Stow, to the parish of Haughley, both in the county of Suffolk, the sessions confirmed the order, subject to the following case:—By an act of 18 Geo. III. c. 35, all persons seised of messuages, lands, tenements, and hereditaments, of the annual value of 30*l.* and upwards, in the parishes within the hundred of Stow in the county of Suffolk, were incorporated by the name of "the guardians of the poor within the hundred of Stow in the county of Suffolk," and were to have a common seal, and to sue and be sued by that name, and the poor in the said hundred were placed under the management of the said corporation; and it was enacted, that it should be lawful for the directors and acting guardians thereafter mentioned, at any general meeting, or at any of the quarterly meetings by that act directed to be held, with the consent of the justices of the peace, to bind any poor child or children under their management apprentice for such term as they should see fit, not exceeding seven years, in like manner as churchwardens and overseers of the poor, with the assent of the justices of the peace, were then by law empowered to do. The act afterwards directed, that the acting guardians, or so many of them as should think fit, should assemble on the 24th day of June then next, and elect by ballot twelve of the guardians, who should be called directors of the poor within the said hundred. The qualification of a director was, the being seised of messuages, &c., of the annual value of 30*l.*; but it was provided, that such of the guardians as were seised of messuages, &c., of the annual value of 400*l.*, and the justices resident in the hundred, should be directors without ballot. A poorhouse was to be built under the management of the directors; and upon its being finished, a general meeting of the guardians

Where a local act incorporated certain proprietors by the name of "guardians of the poor" with directions for appointing directors and acting guardians, who were empowered to bind out poor children apprentices:—Held, that a binding by the directors and acting guardians under the corporation seal was held to be invalid as a corporate act, not being executed by the true corporate name.

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was to be held, at which the vacancies which had occurred among the directors who had been balloted for were to be filled up; and the guardians were at a meeting to elect twenty-four guardians, who, together with the directors qualified as aforesaid, and the twelve directors chosen by ballot, were to be the directors and acting guardians of the said hundred, for putting in execution all the powers and authorities of that act. The directors and acting guardians were to hold four general quarterly meetings in each year; one of them to be always held on the Friday after the 24th of June, and to be for filling up vacancies in the directors chosen by ballot, and for choosing acting guardians; after which the acting guardians were at such meetings to choose six persons from among themselves, who, with the directors, were to audit the accounts, and to choose a treasurer and clerk; and they were thereby authorized and required to transact and do all other business to be done at such quarterly meetings respectively, in pursuance of that act. By an act of the 5 Geo. IV. c. xviii., for altering and enlarging the power of the recited act, the provisions in the 18 Geo. III. c. 35, respecting apprenticeships were repealed, and re-enacted with a clause enabling the directors and guardians, present at any meeting held in pursuance of the 18 Geo. III., to bind poor children by indentures *under the common seal of the corporation*. A quarterly meeting of the directors and acting guardians being duly held under the directions of the act, 18 Geo. III., by an indenture bearing date the 1st day of October, 1821, it was witnessed that the directors and acting guardians of the poor within the hundred of Stow in the county of Suffolk, incorporated for the better relief and maintenance of the poor within the said hundred, by and with the consent of two justices for the said county whose names were subscribed, and in pursuance of an order of two justices of the said county therein also named, did put and place Thomas Rampling, a poor child belonging to the parish of Gipping, within the said hundred, and residing at and maintained in the house for the poor within the hundred, apprentice to Robert Steggall of Gipping, for the term of one year. To this indenture the common seal of the corporation was affixed at such meeting, but the indenture was not otherwise executed by the directors and acting guardians. It was executed by the master. The pauper served the year, sleeping in the parish of Gipping. The question was, whether or not this binding, previous to the statute 5 Geo. IV. c. xviii. was valid under the 18 Geo. III. c. 35. *Denman, C. J.* "The indenture was not executed in the name of the corporation, and is not their deed; and if executed in pursuance of the special power reserved by the 18 Geo. III. to the directors and acting guardians, it should have been signed and sealed by each of them. The binding was invalid." *Littledale, J.* "I am of the same opinion. The name of the corporation is the Guardians of the Poor within the hundred of Stow. The binding parties to this indenture are the directors and acting guardians. They are in the nature of a committee of the corporation appointed for certain purposes." *Parke, J.* "The argument is, that the directors and acting guardians meant to act as the agents of the corporation. But, assuming that to be so, the corporation should have been the binding parties, and the indenture should have been their deed. That brings it to the question whether it is their deed, which again depends upon this, whether they are described as the binding parties by their true corporate name. Now the doctrine upon that subject, as established in the case of the *Mayor and Burgesses of Lynn*, and recognized in that of the *Croydon Hospital v. Farley*, is, that in grants or conveyances the name of a corporation must be the same in substance with the true name, but need not be the same in words or syllables. Applying that rule to the present case, it seems to me that 'the directors and acting guardians of the poor' is not in substance the same name as 'the guardians of the poor.' That being so, the binding, not being by the corporation, is invalid." Order of sessions confirmed.

Where a premium is given, the indenture must be stamped within the times

Page 496.—After *Rex v. Preston*, insert *Rex v. Church Hulme*, 5 B. & Ad. 1029, n. (b). On appeal against an order of two justices, whereby Thomas Longstaff, and his wife and two children, were removed from Church Hulme to Nether Knutsford in the county of Chester, the sessions quashed the

order, subject to the opinion of the court on a case, by which it appeared that the pauper, by indenture of the 30th September, 1820, bound himself, with the consent and approbation of his father, to serve Peter Orme, then residing in the appellant township, as an apprentice, for five years; and Peter Orme, in consideration of the sum of 10*l.*, which was given with the apprentice, covenanted to instruct him, &c. Under this indenture, which was duly executed by all the proper parties, the pauper served his master in the appellant township upwards of three years. The indenture was not stamped until after the order was made for the removal of the pauper and within a few days of the sessions, when it was stamped at the instance of the inhabitants of the respondent township, and not of any of the parties to the indenture, though they were living. The sessions, on production of the indenture, finding that it had been stamped with the proper duty stamp required by 55 Geo. III. c. 184, sch. A., part I., (viz. 1*l.*), upon payment of a penalty of 5*l.*, within a few days before the trial of the appeal, quashed the order. Lord Tenterden, C. J. "I cannot distinguish this case from *Rex v. Chipping Norton*. That case went on the ground that the provisions of the stat. 8 Ann. c. 9, were in force, and therefore that an indenture of apprenticeship must be stamped with the premium stamp, within the time required by that statute. That case is decisive of the present, if the provisions of the stat. 9 Ann. still continue in force. Now, it has not been shown that they are repealed; on the contrary, it appears that the legislature, in the statutes repealing duties previously imposed, has studiously retained all the provisions, clauses, regulations, directions, &c. contained in the several acts relating to the duties repealed. That being so, no settlement was gained by the pauper in Knutsford. The order of sessions must be confirmed." Littleton, J., "I think the provisions in question are continued by 55 Geo. III. c. 184, s. 8., as well as by the preceding acts." Parke, J. "The respondents were bound to show either that the decision in *Rex v. Chipping Norton* was wrong, or that the provisions in question in stat. 8 Ann. c. 9, had been repealed by some act since 44 Geo. III. c. 98. It appears to me that neither can be done." Taunton, J., concurred. Order of sessions confirmed.

Rex v. Ide, 2 B. & Ad. 866. Upon an appeal against an order of two justices, whereby John Stroude was removed from the parish of Hennock, in the county of Devon, to the parish of Ide, in the same county, the sessions confirmed the order, subject to the opinion of the Court of King's Bench on the following case:—By indenture, bearing date the 25th of April, 1817, made in pursuance of a previous order of two justices, and in conformity to the provisions of the stat. 56 Geo. III. c. 139, the pauper, John Stroude, was bound apprentice by the overseers of Ide, to Ambrose Badcock, of the same parish. By an assignment, dated the 2d of May, 1817, made pursuant to the provisions of the 32 Geo. III. c. 57, and in the form prescribed by the schedule to that act, and with the consent of two justices, as directed by the statute, the apprentice was assigned by Ambrose Badcock to James Long, of the parish of Hennock, and lived with Long in that parish, in service under the assignment, a sufficient length of time to gain a settlement. The assignment was executed by Badcock and Long, and the two justices; and at the time of the production of it in court on the hearing of the appeal, it bore a 1*l.* stamp, which had been affixed on payment of the penalty a short time before, and more than six months after the date and making of it. Badcock paid Long 5*l.* as the consideration of this transfer of the apprentice to him; but this was not set out in the assignment, nor was any mention made of it therein. And on this account it was contended by the respondent parish (Hennock) that no settlement could be gained under it; and the question for the opinion of the court was, whether the pauper had gained a settlement by his residence and service under this assignment. Lord Tenterden, C. J. "I am of opinion that this instrument was sufficiently stamped, and in due time. It is said that the assignment is within the meaning and provisions of the statute of Anne, whereby it is required that the premium paid on the indenture of apprenticeship shall be truly set forth

Assignment of a parish apprentice held not to be within 8 Anne, c. 9; and therefore it need not be stamped within two months, nor need the consideration for it be set out.

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in the instrument; and here the sum paid by the new master to the old is not set out. Therefore the question arises whether an assignment of an indenture of an apprentice is within that statute. Now, it has been often held that acts which impose a charge on the subject must be construed strictly. The stamp acts, therefore, cannot apply to instruments not specifically designated therein, and hence the modern stamp acts are framed so elaborately to comprehend all possible cases. Unless, therefore, the assignment of an apprentice be distinctly intended in the statute of Anne, we cannot hold it to be subject to the duties there imposed. But every word there manifestly applies itself to the original instrument only, and not to a subsequent assignment. Under the late stamp acts, the indenture of apprenticeship, and an assignment thereof, are treated separately, and are made subject to separate duties, which clearly shows that the legislature thought the latter would not be included under the terms used in the statute of Anne. The order of sessions must therefore be quashed." *Parke, J.* "Considering the strict construction that ought to be put on a statute which imposes duties upon the subject, I think an assignment of this kind cannot be looked upon as included in the statute of Anne." *Taunton and Patteson, Justices, concurred.* Order of sessions quashed.

The master of a parish apprentice being abroad, his steward assigned the apprentice by writing signed A. (the master), by J. P. his steward. J. P. had no special authority for this purpose; but the expense of this and of former similar assignments had been allowed in J. P.'s accounts with A.: Held, that the assignment was bad, as the master ought to exercise a discretion as to making an assignment, and, at all events, to execute a special authority for the making of it by another person. But *quære*, whether the assignment must not be executed by the master himself. *Quære* also, whether a parish apprentice can be bound to a person residing abroad, though occupying land in the parish.

Page 493.—After *R. v. Gravesend*, insert *R. v. Spreyton*, 3 B. & Ad. 818. On appeal against an order of two justices removing Josiah Lee from the parish of Spreyton, in the county of Devon, to the parish of Powderham, in the same county, the sessions quashed the order, subject to the opinion of the court of K. B. on the following case:—On the 2d of Oct. 1818, an order was made by two justices of the county of Devon, under the stat. 56 G. III. c. 139, for binding the pauper, a poor child of the parish of Powderham, apprentice to Lord Viscount Courtenay, described in the order as of Powderham in the said county, and on the following day the pauper was bound accordingly, in the usual form, by indenture referring to the above order, with the allowance of the two justices, to be instructed in husbandry work. The indenture was executed by the churchwardens and overseers of Powderham, but not by Lord Courtenay. At the time of the binding, Lord Courtenay was in a foreign country, where he had been residing some years, and has continued to reside ever since: but during all that time he kept in his own hands the mansion called Powderham Castle, and an estate of between 200 and 300 acres, all within the parish of Powderham. This property was under the care of Mr. John Pidsley, Lord Courtenay's steward, who, as the general agent of Lord Courtenay, conducted all his affairs at Powderham, but acted under no power of attorney or written instructions. When the pauper was bound as above mentioned, the steward accepted him as Lord Courtenay's apprentice, and, intending to assign him to a new master, agreed with his mother to take care of him in the parish of Powderham till he could get a place for him, and allowed her a weekly sum for his maintenance. Some time afterwards Mr. Pidsley agreed with one Richard Paddon, living in the parish of Spreyton, that Paddon, in consideration of 5*l.*, should take an assignment of the apprentice; and accordingly, in January, 1820, a written instrument bearing a stamp of 1*l.* was drawn up, by which, after reciting the execution of the indenture, it was stated that Lord Viscount Courtenay, with the consent and approbation of two justices for the county of Devon, did thereby assign the apprentice to Paddon, to serve him during the residue of the term of apprenticeship; and that Paddon, in consideration of the said sum of 5*l.*, agreed to accept and take the apprentice during the residue of the term, and acknowledged himself, his executors, &c. bound by the agreements and covenants mentioned in the indenture on the part of Lord Courtenay to be performed, agreeably to the statute, &c. The instrument was signed "Lord Viscount Courtenay, by John Pidsley his steward. Richard Paddon." The consent of the two justices was added, and subscribed with their names. Mr. Pidsley had no special authority, either written or verbal, to assign apprentices in general, or to sign this instrument for Lord Courtenay, but did it only by virtue of his general agency. He had on several occasions received parish apprentices on behalf of Lord Courtenay, had expended sums for their maintenance, and had paid money on the

assignment of them to other masters (which assignments were executed in the same manner as the present), and these sums were always allowed him on the annual settlement of his accounts with Lord Courtenay. The 5*l.* which he paid to Paddon on this occasion was in like manner allowed. The pauper served the remainder of his term with Paddon in Spreyton. The questions for this court were, first, whether the original binding was valid; secondly, whether the assignment was valid. The case was argued on a former day of the term. Lord *Tenterden*, C. J. now delivered the judgment of the court. After stating the facts, his lordship proceeded as follows: "Two objections were relied upon by the respondents; first, that the original binding of the apprentice to Lord Courtenay, then residing abroad, was invalid; and, secondly, that the assignment was also invalid. It is unnecessary to decide the first point, as we are all of opinion that the assignment was bad. The statute 32 Geo. III. c. 57, s. 7, enacts, 'that it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, &c. where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship:' provided that the person to whom the apprentice is to be assigned, shall at the same time, 'by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship, and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice,' and acknowledge himself, herself, &c. bound by the covenants on the part of the master or mistress to be performed. It is not expressly said, that the master assigning the apprentice shall himself sign the instrument; but I do not see how it could be valid unless he did, and the form given in schedule (D.) purports to be so signed. But assuming that a person duly authorized by the master might execute the assignment, we think that in this case no sufficient authority is shown. The master ought, at all events, to exercise his own discretion as to the making of the assignment. Here no discretion was exercised on his part. There is no proof of any direction given by him: it only appears, that after the assignment was made, he allowed the expenses of it in his steward's account. We think that is not equivalent to a distinct authority from Lord Courtenay to the steward to execute this instrument for him. No settlement, therefore, was gained by the service in Spreyton; and whether the original binding was valid or not, the pauper's settlement is in the parish of Powderham, to which he belonged before the binding, and in which he was bound." Order of sessions quashed.

Page 517.—After *Rex v. St. Margaret's King's Lynn*, insert *Rex v. Ightham*, 6 Nev. & Man. 320. Order of removal from Ightham to Sunbridge was quashed upon appeal. Case:—The respondents proved a settlement by birth in Ightham. The appellants set up a subsequent settlement in Sunbridge, under the following circumstances:—William Webb, the brother of the pauper John Webb, worked with William Wright, a carpenter, residing at Ightham, for three years, under a verbal contract of apprenticeship, and in 1804, when the pauper was about twenty years old, applied to Wright to take the pauper in his place. Wright answered "no," that he would take no more three-years' apprentices unless they would agree to work on his land as well as at the carpentry business. "I will have no more apprentices for three years, unless he is agreeable to do other work as well; I will take him to do work as a servant." Wright occupied three acres of hop ground. William Webb assented, and it was agreed that the pauper should live with Wright for three years, to learn the business of a carpenter, and do any other work he required him to do; to be paid for the first year 9*s.* a week, the second 10*s.*, and for the third 11*s.*; and if the pauper did any over-work, he was to be paid for it in addition, according to his rate of wages at the time. Wright added, that the pauper might have Sunday to himself if he asked leave. The pauper entered Wright's service in pursuance of this

A., a carpenter and occupier of land, is applied to by *B.*, who wishes to succeed *C.* as an apprentice to *A.* *A.* says he will take no more apprentices, unless they will work on the land as well as at the trade, and that he will take him to do work as a servant. It is agreed that *B.* shall live with *A.* three years, to learn the business of a carpenter, and to do any other work that shall be required by *A.*, who is to pay him certain weekly wages, and also for overwork.

The question,

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whether this agreement constituted a contract of apprenticeship or of hiring and service, ought to be decided by the sessions. But where the sessions, having decided that it is a contract of hiring and service, granted a special case, the court, upon the facts found as above, reversed their decision, holding that the agreement was an imperfect contract of apprenticeship.

agreement, and served the three years, boarding and lodging at his own expense with a journeyman. Lord Denman, C. J. "This, in my opinion, is a defective contract of apprenticeship. The pauper was to live with Wright three years, to learn the business of a carpenter, and do any other work he required him to do. I think the master might have been sued for not teaching the pauper the business of a carpenter." *Littledale, J.* "The pauper was the brother of a former apprentice: the master says I will have no more apprentices for three years, unless he is agreeable to do other work as well;—I will take him to do work as a servant. The question then is, whether the working as a servant was subsidiary to the apprenticeship. The brother assented to what the master said, and it was agreed that the pauper should live with the master for three years, to learn the business of a carpenter, and do any other work he required him to do, for which he was to be paid. It is not unusual for a master to pay his apprentice. Upon the whole, this must be taken to be a contract of apprenticeship." *Patteson, J.* "I think this is an imperfect contract of apprenticeship. It appears that on the first application by the pauper's brother, the master said he would take no more apprentices unless they would work on the land as well as at the carpentry business;—and the pauper, as I understand the case, subsequently consented to work as a servant as well as an apprentice. The pauper's object, however, was to learn and the master undertook to take him as a servant and teach him the business of a carpenter." *Coleridge, J.* "This case should not have come here. The sessions should have found whether this was a contract of hiring and service, or a defective apprenticeship. In *Rex v. Great Wishford* there was evidence to support the finding of the sessions. I agree with the rest of the court, and I would remark, that it would be better if counsel did not press for a case on questions of this description." Order of sessions quashed.

A pauper rented a windmill and a brick built cottage and garden, at the rent of 30*l.* per annum, for six years, and during that time held and occupied the same, and actually paid that rent, and was rated to and paid the rates for the relief of the poor. The cottage and garden, with the mill, were together of more than the annual value of 10*l.*, but exclusive of the mill they were not of that annual value. The mill was of wood, and had a foundation of brick; but the wood work was not inserted in the brick foundation, but rested upon it by its own weight alone. No part of the machinery of the mill touched the ground or any part of the foundation: Held, that the windmill not being affixed to the freehold, nor to any thing connected with it, was not parcel of a tenement, and consequently that the pauper gained no settlement.

Page 641.—After *Rex v. Whitechapel* insert *Rex v. Otley*, 1 B. & Ad. 161. Upon appeal against an order of two justices, whereby Samuel Stammers and his four children were removed from the parish of St. Mary, Lambeth, in the county of Surrey, to the parish of Otley, in the county of Suffolk, the sessions confirmed the order, subject to the opinion of this court on the following case:—Samuel Stammers, the pauper, rented of James Bedwell, of Ipswich, carpenter, in the appellant parish, a windmill called a smock mill, a brick built cottage, and a small garden, at the rent of 30*l.* per annum, during the space of six years and three quarters of another year, ending Midsummer, 1827; and during the whole of that time held, occupied, and actually paid for the same the said sum of 30*l.* per annum, and was rated to and paid several rates for the relief of the poor of the parish of Otley in respect of the cottage and garden, and also of the mill, at the estimated value of 6*l.* per annum. The cottage and garden, with the mill, are together of more than the annual value of 10*l.*, but the cottage and garden, exclusively of the mill, are not of that annual value. The mill is of a circular form, and of wood, having a foundation of brick twelve inches high from the ground, in which the wood work is not inserted, but rests upon it by its own weight alone. No part of the machinery of the mill touches the ground or any part of the foundation; the whole is confined to the wooden part of it, which has two floors; but on the ground within the brick foundation, planks are laid down so as to form a flooring, and the mill would work as well upon the ground as upon the brick foundation. Some time after the erection of the mill, the tenant placed mortar on the inside and outside of the cill or bottom part of the wood work of the mill, for the purpose of excluding the weather, mortar so placed not acting as a cement between wood and brick work; and he also fixed posts in the ground, which sloping towards the mill, supported steps by which the mill was entered. The question for the opinion of the court was, whether the mill in question was a tenement by the renting of which the pauper could acquire a settlement in Otley. *Bayley, J.* "The question is, whether the mill be a parcel of the tenement. To be so, it must be part and parcel of the freehold. Now it is not parcel of the freehold unless it be affixed to it, or to something previously connected with it. Here

the mill was not affixed to the land, but merely rested on a foundation of brick. The sessions have found that if it had stood upon the ground, it would have worked as well. If it had, the only difference would have been, that it probably would have rotted. This is analogous to the case of a barn set upon pillars; and that is nothing more than a chattel. The windmill in this case would clearly have gone to the executor, and not to the heir." *Littledale, J.* "This is precisely within the case of *Rex v. The Inhabitants of Londonthorpe* (6 T. R. 377.) It is attempted to be distinguished, because the tenant in that case had permission from the landlord to put up the mill, and it was treated by both as a chattel; but that circumstance can make no difference. Suppose there were two mills in two distinct townships, and one of the townships treated the mill as a tenement, and the other as a mere chattel. That would make no difference. It must depend upon the nature of the building, and not upon the mode of treating it, whether it be a tenement or not." *Parke, J.* "I am of the same opinion. To constitute a tenement, it is necessary that the structure should be affixed to the soil, or to something annexed to the soil. Here the windmill rested merely upon the brick foundation, without being annexed to it by cement." Order of sessions quashed.

Page 906.—After *Rex v. Binegar* add *Rex v. St. John Delpike*, 2 B. & Ad. 226. Upon an appeal against an order of two justices, whereby Mary Laycock was removed from St. Mary Castlegate, in the city of York, to the parish of St. John Delpike, in the same city, the court of quarter sessions confirmed the order, subject to the opinion of the Court of K. B. on the following case:—In the year 1808, the pauper not then being a widow, and being under the age of twenty-one years, intermarried with one James Laycock. This marriage was solemnized by license in the parish church of St. Lawrence, in the city of York, without the consent of the pauper's father, who was then living. She continued to live with James Laycock as his wife till 1825, when she intermarried with one Thomas Laycock, the said James Laycock then and still being alive. The question for the opinion of the court was, whether the former marriage with James Laycock was or was not valid: if it were declared valid, then the order of sessions was to be quashed; if invalid, then to be affirmed. Lord *Tenterden, C. J.* "We must construe the proviso in the third section as intended to apply to cases which occurred before the passing of the 3 Geo. IV. c. 75. Section 2 applies to marriages which, under certain circumstances, were rendered invalid by the 26 Geo. II. c. 33, and which are by that section rendered valid in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. The provision in section 3, that "the act shall not extend to render valid any marriage where either of the parties shall at any time afterwards during the life of the other party have lawfully intermarried with any other person," may have been wholly unnecessary. At the same time it may possibly have occurred to those who framed the act that it might occasionally happen, that one of the two parties to the first marriage might, during the life of the other, have lawfully intermarried with a third, and might afterwards have cohabited again with the original husband or wife, till the death of one, or the passing of the act. I think, however, that clause was introduced only for greater caution, and that we ought not to construe the act so that a marriage may first be treated as valid, and afterwards as invalid. The first marriage, therefore, was valid: and consequently the order of sessions must be quashed." *Littledale, J.* "The second section renders valid marriages which, by the 26 Geo. II. c. 33, would be void. I think the words of that and the following section are, in their natural construction, retrospective. And without express words to a contrary effect, we could not say that the validity given by this act to marriages was intended to be shifting and uncertain. The proviso in the third section, that 'the act shall not extend to render valid any marriage declared invalid by any court of competent jurisdiction before the passing of that act, nor any marriage where either of the parties shall at any time

A marriage void by s. 11, of 26 G. 2, c. 33 (Marriage Act), but made valid by s. 2, of 3 G. 4, c. 75, shall not subsequently be rendered invalid by the marriage of either of the parties during the life of the other with a third party.

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afterwards, during the life of the other party, have lawfully intermarried with any other person,' seems to contemplate cases not very likely to happen in conjunction with the circumstances pointed out in the second section. But such cases are possible. Parties might continue to cohabit, yet friends might choose to render the marriage invalid. So the parties to the original marriage might cohabit together, though one had been lawfully married in the mean time to another. But if there could be a floating shifting validity, the consequence might be, that children might be legitimate one day and not another; and it appears to me that this is not contemplated by the act." *Parke, J.* "I think this is a very clear case. The second section renders valid marriages otherwise invalid by the 26 Geo. II. c. 33, in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. Under that section, therefore, the first marriage would be valid; because here the parties did continue to live together till the passing of the act. Then, the third section enacts, that the act shall not render valid any marriage where one of the parties shall, during the other's life, have lawfully intermarried with any other person. It is said that this clause is prospective. If it be retrospective only, there can be no question in the case. If it be prospective, this absurdity will follow,—that parties, whose marriage is rendered valid by the second section, may at any time they please bastardize their issue by contracting a subsequent marriage. Such a construction ought not to be given to the words of the act, unless it be absolutely necessary. But then it is said that if the construction be retrospective only, this clause is useless. That would not be a sufficient reason for so absurd a construction as that contended for by the respondent parish: but in truth, the clause is not altogether useless; for two parties may be living together, and yet one have married another person; and this case is provided for by the last part of the third section. The argument assumes that a party cannot commit bigamy, without ceasing to live with his first wife. A man may have continued to cohabit with his first wife till the passing of the act, or the death of one of the parties, and yet have contracted another and a valid marriage in the mean time." *Patteson, J.* "I think the original marriage was rendered valid by the second section, and that the third section has a retrospective operation only; and, therefore, that the marriage of the pauper to Thomas Laycock after the passing of the act does not take the case out of the second section." Order of sessions quashed.

The court refused a mandamus to the sessions to state a special case, though it appeared that a case had been granted, as the decision of the sessions upon the facts precluded any question of law.

Page 921, after *Rex v. Preston on the Hill*, insert *Rex v. Justices of Pembrokeshire*, 2 B. & Ad. 391. On a rule nisi for a mandamus to the justices of Pembrokeshire to state a special case for the opinion of the Court of King's Bench, pursuant to an order of sessions made on hearing an appeal against an order of removal from Narberth to Llanboidy, and to return the case so stated into the said court, it appeared by the affidavits in support of the rule, that the appeal came on to be tried at the Midsummer quarter sessions for Pembrokeshire, in 1830, when, after hearing contradictory evidence on behalf of the two parties on a question of settlement by renting a tenement, the court confirmed the order; but, being requested to grant a case, did so in general terms, and without reference to any specific point. The attorneys could not agree in drawing up a case; and, upon their waiting on the chairman in order that he might settle the statements they had prepared, he said he could not sign any case by which it should not appear that the court had decided in favour of the respondents on the facts, independent of the law. The appellants' attorney declined taking a case so stated. It appeared by the affidavits against the rule, that the question of law which the appellants wished to bring before the court regarded the effect of a supposed agreement between the pauper and the landlord of the tenement, that certain repairs to be done by the pauper (and which it was alleged he had afterwards done) should be allowed in lieu of rent: but it seemed that the justices at sessions, although they granted the case, had been of opinion, upon the evidence, that

the agreement had not been made, nor the repairs done; and the chairman would not sign any statement to a different effect. Lord *Tenterden*, C. J. "The justices have confirmed the order, subject to a case. That is no confirmation, unless a case be stated. All we can do, under the circumstances, is to require them to enter continuances, and hear the appeal. I do not see how we can order them to state a case." The rest of the court concurred. Rule discharged. On a subsequent day in the term, *Rex v. Earl of Effingham* (determined in Hilary Term, 1782,) was mentioned, from a note taken by the late Mr. *Dealtry*, and in which the court granted a mandamus to the justices present at the last Bradford (West Riding of Yorkshire) sessions, to state a case. Lord *Tenterden*, C. J. "I admit that there may be instances in which such a mandamus may issue; but not that it ought to go upon the present application. Here the case, if stated, could come to nothing. The facts are for the judgment of the sessions; and, under the circumstances disclosed, it would evidently be useless to call upon them for a case."

Rex v. Earl of Effingham and others, 2 B. & Ad. 393, n. Motion by Mr. *J. P. Heywood* for a mandamus to the Earl of Effingham, Henry Wickham, esq., Henry Wood, D.D., Henry Zouch, clerk, Pemberton Milnes, esq., Sir Watts Horton, bart., and Joshua Horton, esq., justices, &c. of the West Riding of Yorkshire, commanding them to state a special case on an appeal between the inhabitants of Northowram and the inhabitants of Hipperholme, determined by them at sessions, 13th of July last; on affidavit that, the order being affirmed, the appellants desired a special case to be stated, which the sessions unanimously consented to; and the counsel for the appellants drew the case; and in the afternoon both counsel tendered the case to the sessions for their approbation. Mr. Wickham and Mr. Horton, who joined in making the original order, and Sir Watts Horton, who had an estate in each parish, and therefore declined giving any opinion in the morning, were the only justices remaining, when Sir W. H. refused to permit the case to be stated; and he being joined by Mr. Horton, no case was stated. Lord *Mansfield* doubted whether a mandamus could go to compel justices to state a case; but Mr. Justice *Buller* saying that in this instance the court of quarter sessions had actually agreed to state one, but Sir W. H. prevented it, a rule nisi was granted. Mr. *Fearnley* and Mr. *Dunning* (in Hilary Term, 1782) showed cause, on affidavits, in which it was represented that the case had not been regularly granted, but that some of the justices had said a case might be stated if counsel could agree upon one; that counsel had not agreed, and that no directions for a case had been given to the clerk of the peace. The *Attorney-General* and Mr. *Heywood* in reply, said that the case had been properly granted, and that the justices were willing that it should be stated; and the *Attorney-General* mentioned that an instance had occurred in which a mandamus had been granted, when the respondents would not consent to the stating of a case. Lord *Mansfield* ordered the case annexed to the affidavits in support of the rule to be read; and, it being read, asked Mr. *Fearnley* what facts in the case he could controvert? Mr. *Fearnley* said he had not seen the case at the sessions, and was not prepared now to go into the truth of the facts. Mr. *Heywood* observed, that though the case was annexed to Mr. Parker's affidavit, none of the justices showing cause had denied any fact in it. Lord *Mansfield* said there had been a misunderstanding; there did not seem to be any contrariety of facts, and the mandamus must go. Mr. *Fearnley* asked whether the justices must re-examine the witnesses? Lord *Mansfield*, "They must do it in order to know what case to return, if there is a difference about the facts." In Easter Term, 1782, a return was made, stating a special case, and stating also that the sessions had discharged the order of two justices; and a rule nisi was obtained for affirming this last-mentioned order of sessions; which rule was afterwards made absolute, no cause being shown.

Aliter where the decision of the sessions as to a case had been defeated by some misunderstanding.

Page 890.—*Rex v. Holbeach*, Mich. T. 1836. The pauper stated in his examination, that he contracted to serve S. Boston for a year, and served it. If the appellant specifies a par-

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particular ground of objection to a hiring, he will be confined to that in the appeal.

Although the examination discloses an imperfect settlement, the respondents may give evidence of it.

In the statement of the grounds of appeal, the appellant said "that the pauper did not contract with S. Boston as mentioned in the examination, but that before any earnest was paid, or the contract completed, the pauper stipulated that he should have two days' holiday at Spalding fair in July, and that he went accordingly." Upon the trial of the appeal, proof was given that the pauper stipulated for Holbeach fair for one day, which he had. The Court of King's Bench were of opinion that this statement of the ground of appeal was insufficient, as it was calculated to mislead the respondents. (a)

Rex v. Kelvedon, Mich. T. 1836. The pauper, in his examination upon which the order of removal was made, stated, "I was born at Kelvedon, where my father resided; but he belonged to Costlemark, and continued to belong there till he died, as I have heard. I have heard him say he was a certificated man." At the sessions the respondents proceeded to prove the settlement of the father at Costlemark; but the sessions refused to hear it, as the examination did not disclose any settlement, and the respondents were limited to the grounds of removal stated in such examination. *Per curiam*: "The evidence of a settlement in the examination is very loose, and the justices ought not probably to have made an order of removal upon it; but as they have done so, the respondents have done all that the legislature has required them, by sending a copy of the examination. The appellants, by their statement of the grounds of appeal, evidently understand the word 'belonging' as meaning 'settled there;'" and the case was sent back to the sessions to be heard.

(a) A general statement would, according to *Rex v. Justices of Cornwall, ante*, 892, have been sufficient.

APPENDIX.

- I. *Of Statutes.*
- II. *Of Rules and Directions of the Poor Law Commissioners.*
- III. *Of Forms.*

I. OF STATUTES.

4 & 5 WILL. IV. CAP. 76.

4 & 5 W. 4, c. 76.

An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales. [14th August, 1834.]

WHEREAS it is expedient to alter and amend the laws relating to the relief of poor persons in England and Wales: Be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for his Majesty, his heirs and successors, by warrant under the royal sign manual, to appoint three fit persons to be commissioners to carry this act into execution, and also from time to time, at pleasure, to remove any of the commissioners for the time being, and upon every or any vacancy in the said number of commissioners, either by removal or by death or otherwise, to appoint some other fit person to the said office; and until such appointment, it shall be lawful for the surviving or continuing commissioners or commissioner to act as if no such vacancy had occurred.

Appointment and removal of commissioners.

2. And be it further enacted, that the said commissioners shall be styled "The Poor Law Commissioners for England and Wales;" and the said commissioners, or any two of them, may sit from time to time, as they deem expedient, as a board of commissioners for carrying this act into execution; and the said commissioners acting as such board shall be and are hereby empowered, by summons under their hands and seal, to require the attendance of all such persons as they may think fit to call before them upon any question or matter connected with or relating to the administration of the laws for the relief of the poor, and also to make any inquiries and require any answer or returns as to any such question or matter, and also to administer oaths, and examine all such persons upon oath, and to require and enforce the production upon oath of books, contracts, agreements, accounts, and writings, or copies thereof respectively, in anywise relating to any such question or matter; or, in lieu of requiring such oath as aforesaid, the said commissioners may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined: provided always, that no such person shall be required, in obedience to any such summons, to go or travel more than ten miles from the place of his abode; provided also, that nothing herein contained shall extend or be deemed to extend to authorize or empower the said commissioners to act as a court of record, or to require the production of the title, or of any papers or writings relating to the title, of any lands, tenements, or hereditaments, not being the property of any parish or union.

Style of commissioners; who may sit as a board, with power to summon and examine witnesses, and call for production of papers, on oath;

or to substitute a declaration for an oath;

but not to inquire into any title.

3. And be it further enacted, that the said commissioners shall cause to be made a seal of the said board, and shall cause to be sealed or stamped therewith all rules, orders, and regulations made by the said commissioners in pursuance of this act; and all such rules, orders, and regulations, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received as evidence of the same respectively, without any further proof thereof; and no such rule, order, or regulation, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid.

To have a common seal.

Rules, &c. purporting to be sealed with such seal to be received as evidence.

4 & 5 W. 4, c. 76.

Commissioners to record their proceedings.

Commissioners to make a general report to the secretary of state yearly;

and to report proceedings to secretary of state when required.

Power to appoint assistant commissioners;

and to remove same.

Not more than nine to be appointed, without consent of Treasury.

Commissioners not to sit in parliament.

Commissioners to appoint secretary, assistant secretary or secretaries, clerks, and other officers.

Appointment of commissioners, &c. limited to five years.

Commissioners and assistant commissioners to take oath.

Form of oath.

Notification of appointment of commissioners to

4. And be it further enacted, that the said commissioners shall make a record of their proceedings, in which shall be entered in writing a reference to every letter received, from whence, its date, the date of its reception, and the subject to which it relates, and a minute of every letter written or order given by the said commissioners, whether in answer to such letters received or otherwise, with the date of the same, and a minute of the opinion of each of the members of the board of commissioners, in case they should finally differ in opinion upon any order to be given or other proceeding of the board; and such record shall be submitted to one of his Majesty's principal secretaries of state once in every year, or as often as he shall require the same.

5. And be it further enacted, that the said commissioners shall, once in every year, submit to one of the principal secretaries of state a general report of their proceedings; and every such general report shall be laid before both houses of parliament within six weeks after the receipt of the same by such principal secretary of state, if parliament be then sitting, or if parliament be not sitting then within six weeks after the next meeting thereof.

6. And be it further enacted, that the said commissioners shall from time to time, at such times as any one of his Majesty's principal secretaries of state shall direct, give to the principal secretary of state requiring the same such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require.

7. And be it further enacted, that the said commissioners shall and they are hereby empowered from time to time to appoint such persons as they may think fit, to be assistant commissioners for carrying this act into execution, at such places and in such manner as the said commissioners may direct, and to remove such assistant commissioners, or any of them, at their discretion, and on every or any vacancy in the said office of assistant commissioner, by removal or by death or otherwise, to appoint, if they see fit, some other person to the said office: provided always, that it shall not be lawful for the said commissioners to appoint more than nine such assistant commissioners to act at any one time, unless the lord high treasurer, or the commissioners of his Majesty's treasury for the time being, or any three or more of them, shall consent to the appointment of a greater number.

8. And be it further enacted, that no commissioner or assistant commissioner, appointed as aforesaid, shall, during his continuance in such appointment, be capable of being elected or sitting as a member of the House of Commons.

9. And be it further enacted, that the said commissioners may and they are hereby empowered from time to time to appoint a secretary, assistant secretary or secretaries, and all such clerks, messengers, and officers as they shall deem necessary, and from time to time, at the discretion of the said commissioners, to remove such secretary, assistant secretary or secretaries, clerks, messengers, and officers, or any of them, and to appoint others in their stead: provided always, that the amount of the salaries of such secretary, assistant secretary or secretaries, clerks, messengers, and officers, shall from time to time be regulated by the lord high treasurer, or the commissioners of his Majesty's treasury, or any three or more of them.

10. And be it further enacted, that no commissioner to be appointed by his Majesty, nor any assistant commissioner, secretary, or other officer or person to be appointed by the said commissioners, under and by virtue of the provisions of this act, shall continue to hold his respective office, or exercise any of the powers given by this act, for a longer period than five years next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and from and after the expiration of the said period of five years, and of the then next session of parliament, so much of this act as enables his Majesty to appoint any commissioner or commissioners, shall cease to operate or have any effect whatever.

11. And be it further enacted, that every commissioner and assistant commissioner to be appointed from time to time as aforesaid, shall, before he shall enter upon the execution of his office, take the following oath, before one of the judges of his Majesty's Courts of King's Bench or Common Pleas, or one of the barons of the Court of Exchequer; (that is to say,)

"I, A. B., do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, execute and fulfil all the powers and duties of a commissioner [or assistant commissioner, as the case may be,] under an act passed in the fifth year of the reign of King William the Fourth, intituled [here set forth the title of this act]."

And the appointment of every such commissioner and assistant commissioner, together with the time when and the judge or baron before whom he shall have taken the oath aforesaid, shall be forthwith published in the London Gazette; and a noti-

fication of such appointment and of the taking of such oath shall from time to time be sent, under the hands and seal of the said commissioners, to the clerk of the peace of every county in England and Wales, who shall and is hereby required as soon as conveniently may be to cause the same to be advertized once in some newspaper published or circulated in such county; and such notification as aforesaid shall be kept and preserved by such clerk of the peace with the records of such county.

12. And be it further enacted, that it shall be lawful for the said commissioners to delegate to their assistant commissioners, or to any of them, such of the powers and authorities hereby given to the said commissioners (except the powers to make general rules) as the said commissioners shall think fit; and the powers and authorities so delegated, and the delegation thereof, shall be notified in such manner, and such powers and authorities shall be exercised at such places, for such periods, and under such circumstances, and subject to such regulations, as the said commissioners shall direct; and the said commissioners may at any time revoke, recall, alter, or vary all or any of the powers and authorities which shall be so delegated as aforesaid; and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and the said assistant commissioners may and are hereby empowered to summon before them such persons as they may think necessary for the purpose of being examined upon oath (which oath such assistant commissioners are hereby empowered to administer) upon any question or matter relating to the poor or their relief, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, and writings, or copies of the same, in anywise relating to such question or matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, as such assistant commissioners may think fit, but so that no such person shall be required, in obedience to any such summons, to go or travel more than ten miles from the place of his abode: provided, nevertheless, that in lieu of requiring such oath as aforesaid the said assistant commissioners may, if they think fit, require such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined; and all summonses and orders made by any such assistant commissioner in pursuance or exercise of such delegated powers and authorities, shall be obeyed, performed, and carried into effect by all persons, as if such summons or order had been the summons or order of the said commissioners, and the breach, non-observance, or non-performance thereof shall be punishable in like manner.

13. And be it further enacted, that if any person, upon any examination under the authority of this act, shall wilfully and corruptly give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false declaration, he shall, on being convicted thereof, suffer the pains and penalties of perjury; and if any person shall wilfully refuse to attend, in obedience to any summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be so required to be produced before the said commissioners or assistant commissioners, every person so offending shall be deemed guilty of a misdemeanor.

14. And be it further enacted, that it shall be lawful for the said commissioners, in any case where they see fit, to order and allow such expenses of witnesses, and of or attending the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said commissioners or assistant commissioners, as such commissioners may deem reasonable, to be paid as follows: that is to say, out of the poor rates of the respective parish or union which in the opinion of the said commissioners shall be interested or concerned in such attendance or production respectively, in all cases in which such witnesses shall not go or travel more than ten miles from the respective parish or union which shall be interested or concerned as aforesaid; and in all other cases, the expenses so ordered or allowed shall be deemed as part of the incidental expenses attending the execution of this act, and be paid accordingly.

15. And be it further enacted, that from and after the passing of this act the administration of relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force at the time being, shall be subject to the direction and control of the said commissioners; and for executing the powers given to them by this act, the said commissioners shall and are hereby authorized and required, from time to time as they shall see occasion, to make and issue all such rules, orders, and regulations for the management of the poor, for the government of workhouses, and the education of the children therein, and for the

4 & 5 W. 4, c. 76.

be sent to clerks of the peace, and published.

Commissioners may delegate powers to assistant commissioners, and revoke them.

Assistant commissioners may summon persons and examine them upon oath:

or a declaration may be substituted for an oath.

Persons giving false evidence guilty of perjury;

refusing to attend, &c. guilty of misdemeanor.

Reasonable expenses of witnesses to be paid, and by whom.

Administration of relief to the poor to be under control of the commissioners; who are to make rules and regulations for the management of the poor, and administra-

4 & 5 W. 4, c. 76.

tion of the laws
for their relief,
&c.

Commissioners
may suspend or
alter rules, &c.

General rules to
be submitted to
secretary of state
forty days before
coming into opera-
tion.

If disallowed by
king in council
during the forty
days, not to come
into operation.

If disallowed af-
terwards.

General rules to
be laid before
parliament.

Rules, orders, &c.
to be sent to
overseers, &c. be-
fore they shall
come into opera-
tion.

Publicity to be
given to rules, &c.
in manner di-
rected by com-
missioners.

Penalty on over-
seer, &c. neglect-
ing to give pub-
licity, &c.

Disallowance of
rule to be notified
in like manner.

management of parish poor children under the provisions of an act made and passed in the seventh year of the reign of his late Majesty King George the Third, intituled "An Act for the better regulation of Parish Poor Children of the several Parishes therein mentioned within the Bills of Mortality," and the superintending, inspecting, and regulating of the houses wherein such poor children are kept and maintained, and for the apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this act into execution in all other respects, as they shall think proper: and the said commissioners may, at their discretion, from time to time suspend, alter, or rescind such rules, orders, and regulations, or any of them: provided always, that nothing in this act contained shall be construed as enabling the said commissioners, or any of them, to interfere in any individual case for the purpose of ordering relief.

16. And be it further enacted, that no general rule of the said commissioners shall operate or take effect until the expiration of forty days after the same, or a copy thereof, shall have been sent, signed and sealed by the said commissioners, to one of his Majesty's principal secretaries of state; and if at any time after any such general rule shall have been so sent to such principal secretary of state, his Majesty, with the advice of his privy council, shall disallow the same or any part thereof, such general rule or the part thereof so disallowed, shall not come into operation, if such disallowance be notified to the said commissioners at any time during the said period of forty days; but if such disallowance be made at any time after that period, such disallowance shall, by one of his majesty's principal secretaries of state, be notified to the said commissioners, and from and after such disallowance shall have been so notified, then such general rule, so far as the same shall have been so disallowed, shall cease to operate, subject however and without prejudice to all acts and transactions under or in virtue of the same previously to such disallowance having been so notified.

17. And be it further enacted, that all general rules for the time being in force at the commencement of every session of parliament, and which shall not previously have been submitted to parliament, shall from time to time, within one week after the commencement of every such session, be laid by one of his Majesty's principal secretaries of state before both houses of parliament.

18. And be it further enacted, that a written or printed copy of every rule, order, or regulation of the said commissioners shall, before the same shall come into operation in any parish or union, be sent by the said commissioners by the post, or in such manner as the commissioners shall think fit, sealed or stamped with their seal, addressed to the overseers of such parish, the guardians of such union or their clerk, and to the clerk to the justices of the petty sessions held for the division in which such parish or union shall be situate; and such overseers, guardians, or their clerk, and clerks to the justices aforesaid, are hereby required to keep and preserve, notify and give publicity to such rules, orders, and regulations, in such manner as the said commissioners shall direct, and also to allow every owner of property, or his agent, or any rate-payer, in every such parish or union, to inspect the same at all reasonable times, free of any charge for such inspection, and to furnish copies of the same, being paid for such copies at and after the rate of threepence for every folio of seventy-two words, and to allow copies or extracts thereof to be taken, on being paid for so doing after the rate of three halfpence for every folio of seventy-two words; and in case any such overseer, guardian, clerk, or clerk to the justices, to whom such rules, orders, or regulations, or copies thereof, shall be sent as aforesaid, shall neglect to keep and preserve, notify and give publicity to the same in the mode prescribed or directed by the said commissioners, or shall refuse such inspection, or to furnish or allow such copies thereof to be taken as aforesaid, every person so offending shall, for every such offence, be subject and liable to a penalty not exceeding the sum of ten pounds nor less than forty shillings, to be recoverable in the same manner as any penalties are by this act directed to be recovered: provided also, that if any such rule shall, after the same shall have come into operation, be disallowed in manner hereinbefore mentioned, or revoked by the said commissioners, then and in every such case the said commissioners shall send, by the post, or in such manner as they shall think fit, to every parish or union affected by the said rule, notice of such disallowance or revocation; such notice of disallowance or revocation to be addressed, kept, preserved, notified, and publicly inspected, and copies thereof fur-

nished or allowed to be taken, in such and the same manner, and subject to the same penalties as are hereinbefore mentioned respecting the rules, orders, and regulations of the said commissioners. 4&5 IV. 4, c. 76.

19. And be it further enacted, that no rules, orders, or regulations of the said commissioners, nor any bye-laws at present in force or to be hereafter made, shall oblige any inmate of any workhouse to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorize the education of any child in such workhouse in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or parent shall object, or, in the case of an orphan, to which the godfather or godmother of such orphan shall so object: provided also, that it shall and may be lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion.

No inmate of a workhouse obliged to attend any religious service contrary to his religious principles, &c.

20. And be it further enacted, that no order or regulation made by any assistant commissioner shall be in force, unless and until the same shall have been adopted by the said commissioners, and sealed or stamped with their seal, and thereupon every such order or regulation shall be considered as made by the said commissioners: and that no rule, order, or regulation of the said commissioners, except orders made in answer to the statements and reports hereinafter authorized to be made by overseers or guardians to the said commissioners, shall be in force, until the expiration of fourteen days after a written or printed copy of the same shall have been sent by the said commissioners, sealed or stamped and addressed as lastly hereinbefore is mentioned.

Orders or regulations of assistant commissioners to be approved and sealed by commissioners.

21. And be it further enacted, that, except where otherwise provided by this act, all the powers and authorities given in and by a certain act of parliament passed in the twenty-second year of the reign of his late majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," and in and by a certain other act passed in the fifty-ninth year of the reign of his said late Majesty, intituled "An Act to amend the Laws for the Relief of the Poor" and all acts for amending such acts respectively, and also all the powers and authorities given by every other act of parliament, general as well as local, for or relating to the building, altering or enlarging of poorhouses and workhouses, and to the acquiring, purchasing, hiring, holding, selling, exchanging, and disposing thereof, or of land whereon the same may have been or may hereafter be erected, and of preparing such houses for the reception of poor persons, and the dieting, clothing, employing, and governing of such poor, and the raising or borrowing of money for any of the purposes aforesaid, and for repaying the same, and all powers of regulating and conducting all other workhouses whatsoever, and of governing, providing for, and employing the poor therein, and all powers auxiliary to any of the powers aforesaid, or in any way relating to the relief of the poor, shall in future be exercised by the persons authorized by law to exercise the same, under the control, and subject to the rules, orders, and regulations of the said commissioners; and the said commissioners and assistant commissioners respectively, and every of them, shall be entitled to attend at every parochial and other local board and vestry, and take part in the discussions, but not to vote at such board or vestry; provided always, that nothing herein contained shall be construed to give the said commissioners or assistant commissioners any power to order the building, purchasing, hiring, altering, or enlarging of any workhouse, or the purchasing or hiring of any land at the charge or for the use of any parish or union, save and except so far as such powers are expressly given by this act.

Powers of 22 G. 3, c. 83, 59 G. 3, c. 12, and of all other acts relating to workhouses, and to borrowing money, to be exercised under control of commissioners, and be subject to their orders.

Commissioners, &c. to be entitled to attend local boards and vestry; but not to order the building or hiring of workhouses, except under limitations.

22. And whereas by the said act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, it is (among other things) enacted that the rules, orders, and regulations specified and contained in the schedule thereunto annexed, should be duly observed and enforced at every poorhouse or workhouse to be provided by virtue of the said act, with such additions as should be made by the justices of the peace of the limit wherein such house or houses should be situate, at some special session, provided that such additions should not be contradictory to the rules, orders, and regulations established by that act, and provided that the same should not be repealed by the justices at their quarter sessions of the peace; and it is expedient that such additions, or other rules, orders, or regulations, under that or any local or other act, should not in future be made without the sanction of the said commissioners: be it therefore enacted, that no additions or alterations shall hereafter be made to or in the rules,

No additions or alterations to be made to the rules contained in the schedule to 22 G. 3, c. 83, or in any other act until confirmed by commissioners.

4 & 5 W. 4, c. 76.

Commissioners
empowered to
order work-
houses to be
built, hired,
altered, or en-
larged, with
consent, &c.

orders, and regulations contained in the schedule to the said recited act, and no rules, orders and regulations shall hereafter be made under the authority of the said recited act, or of any act made for altering, amending, or extending the same, or any local or other act relating to poorhouses, workhouses, or the relief of the poor, until the same shall have been submitted to and approved and confirmed by the said commissioners; and that the same, when so confirmed, shall be legally valid and binding upon all persons; and no justice or justices shall have power to repeal the same.

23. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, from time to time when they may see fit, by any writing under their hands and seal, by and with the consent in writing of a majority of the guardians of any union, or with the consent of a majority of the rate-payers and owners of property entitled to vote in manner hereinafter prescribed, in any parish, such last-mentioned majority to be ascertained in manner provided in and by this act, to order and direct the overseers or guardians of any parish or union not having a workhouse or workhouses, to build a workhouse or workhouses, and to purchase or hire land for the purpose of building the same thereon, or to purchase or hire a workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses; and, with the like consent, to order and direct the overseers or guardians of any parish or union having a workhouse or workhouses, or any buildings capable of being converted into a workhouse or workhouses, to enlarge or alter the same in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution, or to build, hire, or purchase any additional workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses, or to purchase or hire any land for building such additional workhouse or workhouses thereon, of such size and description, and according to such plan, and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers and guardians, to whom any such order shall be directed, are hereby authorized and required to assess, raise, and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways, and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for purchasing or hiring land, or for building, hiring, and maintaining workhouses for the use of the poor, in their respective parishes or unions, or to borrow money for such purposes under the provisions of this or any other act or acts.

Sums to be
raised for pur-
poses of building
workhouses to be
charged on poor
rates; not to ex-
ceed one year's
amount of poor
rates.

24. And be it further enacted, that for the better and more effectually securing the repayment of any sum or sums of money which may be borrowed for the purposes aforesaid, with interest, it shall be lawful for the said overseers or guardians to charge the future poor-rates of such parish or union with the amount of such sum or sums of money: provided always, that the principal sum or sums to be raised for such purposes, whether raised within the year or borrowed, shall in no case exceed the average annual amount of the rates raised for the relief of the poor in such parish or union for three years ending at the Easter next preceding the raising of such money; and that any loan or money borrowed for any of the purposes aforesaid shall be repaid by annual instalments of not less than one-tenth of the sum borrowed, with interest on the same, in any one year.

Power to order
workhouses to be
altered or enlarg-
ed, without con-
sent, &c.

25. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, without requiring any such consent as aforesaid, by any writing under the hands and seal of the said commissioners, to order and direct the overseers or guardians of any parish or union having a workhouse or workhouses, or any building capable of being converted into a workhouse or workhouses, to enlarge or alter the same, according to such plan and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers or guardians to whom any such order shall be directed are hereby authorized and required to assess, raise and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways, and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for altering, enlarging, and maintaining workhouses for the use of the poor in their respective parishes or unions; provided always that the principal sum or sums to be raised for such purposes, and charged upon any parish, shall not exceed in the whole the sum of fifty pounds, nor in any such case exceed one-tenth of the average annual amount of the rates, raised for the relief of the poor in such parish for the three years ending at the Easter next preceding the raising of such money.

Sums to be raised
for such purposes
not to exceed
one-tenth of one
year's rates, or
50l.

26. And be it further enacted, that it shall be lawful for the said commissioners, by order under their hands and seal, to declare so many parishes as they may think fit to be united for the administration of the laws for the relief of the poor, and such parishes shall thereupon be deemed a union for such purpose, and thereupon the workhouse or workhouses of such parishes shall be for their common use; and the said commissioners may issue such rules, orders, and regulations as they shall deem expedient, for the classification of such of the poor of such united parishes in such workhouse or workhouses, as may be relieved in any such workhouse, and such poor may be received, maintained, and employed in any such workhouse or workhouses, as if the same belonged exclusively to the parish to which such poor shall be chargeable; but, notwithstanding such union and classification, each of the said parishes shall be separately chargeable with and liable to defray the expense of its own poor, whether relieved in or out of any such workhouse.

4 & 5 W. 4, c. 76.

Parishes may be united by commissioners.

Each parish chargeable for its own poor.

27. And be it further enacted, that in any union which may be formed under this act, it shall be lawful for any two of his Majesty's justices of the peace usually acting for the district wherein such union may be situated, at their just and proper discretion, to direct, by order under their hands and seals, that relief shall be given to any adult person who shall from old age or infirmity of body be wholly unable to work, without requiring that such person shall reside in any workhouse: provided always, that one of such justices shall certify in such order, of his own knowledge, that such person is wholly unable to work, as aforesaid; and provided further, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of a workhouse.

Justices may order out-door relief to aged and infirm persons wholly unable to work.

28. And be it further enacted, that when any union of parishes for the administration of the laws for the relief of the poor, shall be proposed to be made or shall be made under the provisions of this act, it shall be lawful for the said commissioners, and they are hereby required, from time to time, by such means and in such manner as they may think fit, to inquire into and ascertain the expense incurred by each parish proposed to form part of such union for the relief of the poor belonging to such parish, whether such relief shall have been given in or out of any workhouse, for the three years ending on the twenty-fifth day of March next preceding such inquiry, and thereupon the said commissioners shall proceed to calculate and ascertain the annual average expense of each parish for that period; and the several parishes included or proposed to be included in such union, shall from the time of effecting the same, contribute and be assessed to a common fund for purchasing, building, hiring or providing, altering or enlarging any workhouse or other place for the reception and relief of the poor of such parishes, or for the purchase or renting of any lands or tenements, under and by virtue of the provisions of this act, of or for such union, and for the future upholding and maintaining of such workhouses or places aforesaid, and the payment or allowance of the officers of such union, and the providing of utensils and materials for setting the poor on work therein, and for any other expense to be incurred for the common use or benefit or on the common account of such parishes, in the like proportions as on the said annual average of the said three years such relief had cost each such parish separately, until such average shall be varied or altered as hereinafter provided; provided always, and the said commissioners are hereby authorized, if they shall so think fit, but not otherwise, from time to time, either upon the application of the guardians of such union or of the overseers of any parish forming part of the same, or without such application, to cause a like inquiry and calculation to be made and average ascertained for the three years ending on the twenty-fifth day of March next preceding such inquiry; and from and after the ascertaining of any such average, or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes aforesaid, in the proportions which the expense of such parishes shall be found to have borne to each other during such period upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes.

When a union of parishes shall be proposed, commissioners to inquire the expense of poor belonging to each parish for three years preceding.

Power for taking future averages.

29. And whereas in divers unions formed under the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or under local acts of incorporation, the whole of the expense, as well of upholding the united workhouses therein, as of maintaining and relieving the poor of the respective parishes of such unions, is assessed upon such parishes in the respective proportions fixed at the period when such unions were formed, and in others a part of such expenses is so levied, and a part subjected to variations at stated periods: and whereas some of the parishes of such unions have contributed and still con-

The like provision in unions effected under local acts of incorporation.

22 Geo. 3, c. 83.

4 & 5 W. 4, c. 76.

Power for taking
future averages.Parliamentary
returns to be evi-
dence of actual
expense of poor to
each parish.

tinue to contribute, as their fixed proportion of the general fund, a sum much larger, and others a sum much less, than the actual expense incurred for the relief of the poor belonging to them respectively; for remedy thereof be it enacted, that it shall be lawful for the said commissioners, as soon as conveniently may be after the passing of this act, to cause an inquiry to be made and an account rendered, as it may be practicable to render the same, by the visitors, directors, acting guardians, or other officers of such parishes or unions respectively, of the expense incurred for the relief of the poor belonging to each parish within any such union, whether such poor shall have been relieved in or out of such parish respectively, or in or out of any united workhouse, and whether such expense has been paid by the general fund of such union or the parochial funds of any of the parishes thereof, or by any private rate, or general subscription in lieu of a rate among the rate-payers of any such parish, and whether passed through the books or paid under the control of the managers or officers of such union, or not, for the period of three years ending on the twenty-fifth day of March, one thousand eight hundred and thirty four, including therein a due proportion of the expense of maintaining the united workhouses and establishment of such union, calculated according to the actual expense otherwise incurred for the relief of the poor belonging to each such parish; and the average annual amount of such expense shall be deemed and taken to have been the annual expense incurred by such parish on account of its poor, notwithstanding such parish may have contributed a greater or smaller sum than such annual average to the general funds of the union during such period; and such annual average, so ascertained as aforesaid, shall, if the said commissioners shall see fit, and to such extent only as they may direct, be deemed and taken as the fixed proportion to be contributed and paid by each such parish respectively towards a common fund for the future hiring, maintaining, and upholding, repairing, altering, or enlarging of any workhouse, and the renting of any land used by such union at the passing of this act, and for the purchasing, building, hiring, maintaining, upholding, repairing, altering, or enlarging of any new workhouse or workhouses, or other place for the reception and relief of the poor belonging to the parishes of such union, and for the renting or purchase of any lands or tenements under or by virtue of the provisions of this act, and the payment or allowance of any officers of such union, and the providing of utensils or materials for setting the poor on work therein, and for any other expense to be in future incurred for the common use or benefit of such parishes, and in addition to the cost or proportion of cost of the poor of such parishes who shall be maintained or relieved in or out of any workhouse of such union, for which each such parish shall in future be charged separately; any provision or enactment in the said recited act or in any such local acts to the contrary notwithstanding; provided always, and the said commissioners are hereby authorized, if they see fit, but not otherwise, upon the application of the guardians of any such last-mentioned union, or of the overseers of any parish forming part of the same, or without such application, from time to time, to cause an inquiry and calculation to be made, and average ascertained, for the three years ending on the twenty-fifth day of March next preceding such inquiry, of the expense incurred by each such parish, as well in respect of its contribution to such common fund as of the cost or proportion of cost of its poor which shall have been maintained or relieved in or out of any workhouse of such union during such period of three years; and from and after the ascertaining of such average or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes of which such common fund is hereinbefore declared to be applicable, in the proportions which the expense of such parishes shall be found to have borne to each other during such period, upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes to such common fund: provided always, that nothing herein contained shall extend to any parishes already formed or hereafter to be formed into a union for the purposes of settlement or rating, or where the annual assessment is directed to be indifferently proportioned between the several parishes composing such union.

30. And for facilitating the inquiries directed by this act, be it enacted, that unless and until they shall be proved to the satisfaction of the said commissioners to be incorrect, the returns made to parliament of the sums expended for the relief of the poor of any parish for the last three years previous to the passing of this act, shall be deemed to be the actual expense incurred by each such parish respectively during that period for the purposes aforesaid, and on account of the poor belonging

to such parish respectively, and shall be taken as the ground on which such averages shall be calculated and ascertained. 4 & 5 W. 4, c. 76.

31. And be it further enacted, that from and after the passing of this act, so much of the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," as provides that no parish, township, hamlet, or place which shall be situate more than ten miles from any poorhouse or workhouse to be provided under the authority of that act shall be permitted to be united for the purposes therein mentioned with the parishes, townships, hamlets, and places which shall establish such poor house or workhouse as therein mentioned, and as limits the class or description of persons who shall be sent to such poorhouse or workhouse; and so much of a certain act made and passed in the fifty-sixth year of the reign of his said late Majesty King George the Third, intituled "An Act to repeal certain provisions in Local Acts for the maintenance and Management of the Poor," as repeals all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any parish, township, or hamlet, at a greater distance than ten miles from any house of industry or workhouse, shall thereafter be empowered or authorized to become contributors to or to take the benefit of such house of industry or workhouse, shall be and the same is hereby repealed.

Repeal of 22 Geo. 3, c. 83, s. 5, and 56 Geo. 3, c. 129, part of s. 1, restraining parishes from contributing to workhouse at a greater distance than ten miles; and of 22 Geo. 3, c. 83, s. 29, limiting class of persons to be sent to workhouses.

32. And be it further enacted, that it shall be lawful for the said commissioners, from time to time, as they may see fit, by order under their hands and seal, to declare any union, whether formed before or after the passing of this act (except when united for the purposes of settlement or rating), to be dissolved, or any parish or parishes, specifying the same, to be separated from or added to any such union, and, as the case may be, such union shall thereupon be dissolved, or such parish or parishes shall thereupon be separated from or added to such union accordingly; and the said commissioners shall in every such case frame and make such rules, orders, and regulations as they may think fit for adapting the constitution, management, and board of guardians of every such union, from or to which there shall be such separation or addition as aforesaid, to the altered state of the same, and every such union shall after any such alteration be constituted, managed, and governed as if the same had been originally formed in such altered state: and in case any union shall be wholly or partially dissolved as aforesaid, then the parishes constituting, or, in case of a partial dissolution, separated from any such union, shall thenceforth be subject to be re-united, or united with other parishes or unions, or otherwise dealt with according to the provisions of this act as the said commissioners shall think fit; provided always, that in every such case the said commissioners shall and they are hereby required to ascertain the proportionate value to every parish of such union of the workhouses or other property held or enjoyed by such union for the use of the poor or benefit of the rate-payers therein, and also the proportionate amount chargeable on every parish in respect of all the liabilities of such union existing at the time of such dissolution or alteration of the same, and the said commissioners shall thereupon fix the amount to be received, or paid or secured to be paid, by every parish affected by such alteration; and the sum to be received, if any, by such parish, shall be paid, or as the said commissioners shall direct, be secured to be paid to the overseers or guardians of the same, for the benefit of such parish, and in diminution of the rates thereof and of the expense attending such alteration; and the sum to be so paid or secured to be paid by every such parish shall be raised under the direction of the said commissioners, by the overseers or guardians of such parish, or charged on the poor rates of such parish, as the said commissioners may see fit, and shall be paid or secured for the use and benefit of the union from which the same parish shall have been so separated, or of the persons or parishes otherwise entitled thereto, as the case may be: provided always, that no such dissolution or alteration of the parishes constituting any such union, nor any addition thereto as aforesaid, shall in any manner prejudice, vary, or affect the rights or interests of third persons, unless such third persons, by themselves or their agents, shall consent in writing to such dissolution or proposed alteration or addition; and that no such dissolution, alteration, or addition shall take place or be made, unless a majority of not less than two thirds of the guardians of such union shall also concur therein; and in every such case, when the said majority of the guardians of such union shall so concur in such proposed alteration, the terms on which such concurrence shall have been given, if approved by the said commissioners, shall be binding and conclusive on the several parishes of such union.

Power to dissolve, add to, or take from any union;

and thereupon to make such rules as may be adapted to its altered state.

Rights and interests of parishes, and claims on them, to be ascertained and secured.

Dissolution or alteration not to affect rights of third parties nor take place without the consent of guardians of parish.

33. And be it further enacted, that in any union already formed or which may hereafter be formed in pursuance of or under the provisions of this act, it shall and United parishes may be one pa-

4 & 5 W. 4. c. 76.

parish for purposes
of settlement.

may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians, to agree, subject to the approbation of the said commissioners, for or on behalf of the respective parishes forming such union, that for the purposes of settlement such parishes shall be considered as one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof shall be deposited with the said commissioners, and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, in which the parishes of such union shall be respectively situate; and the said clerk of the peace shall and is hereby required, upon the receipt of such agreement, or counterpart or counterparts thereof, to file the same with the records of such county, riding, division, district, or liberty; and from and after the depositing of the same as aforesaid the said agreement shall for ever thereafter be binding on each of such parishes, and shall not be revoked or annulled; and the settlement of a poor person in any one of the parishes of such union, shall be considered, as between such parishes, a settlement in such union; and the expense of maintaining, supporting, and relieving every such poor person, and all other expenses of maintaining, supporting, and relieving the poor to which any one of such parishes shall be liable after the depositing of such agreement, part or counterpart aforesaid, or of ascertaining, litigating, or adjudging the settlement of any poor person in any of such parishes, shall form part of the general expenses and be paid out of the common funds of such union: provided always, that wherever such agreement is entered into as aforesaid, the rate or proportion of contribution to such common funds to be thereafter paid by each of the parishes of such union, shall be ascertained and fixed in like manner as in and by this act is provided for in cases where any union of parishes is made or proposed to be made under the provisions thereof, and shall not be subject to further variation.

Union may be one
parish for pur-
pose of rating with
consent of guar-
dians.

Agreement or
counterpart for
such rating to be
deposited with
clerk of the peace.

34. And be it further enacted, that where the parishes of any union shall be situate within the same county, riding, division, district or liberty, under the jurisdiction of the same justices of the peace, it shall and may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians to agree, with the approbation of the said commissioners, for or on behalf of the respective parishes for which they shall so act as guardians, that for the purposes of raising in common the necessary funds for the relief of the poor of such union, such parishes shall be considered one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof deposited with the said commissioners, and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, counties district, or districts, in which the said parishes of such union shall be situate; and the said clerk or clerks of the peace shall and is and are hereby required, upon the receipt of such agreement, part, or counterpart, to file the same with the records of such county, riding, division, district, or liberty, or counties, district, or districts, and from and after the depositing and filing of such last-mentioned agreement or counterpart, the same shall be for ever binding upon such parishes, and shall not be revoked or annulled.

Guardians to as-
certain and assess
value of property.

35. And be it further enacted, that from and after such depositing and filing of the said agreement, part, or counterpart, the said guardians shall, under such regulations as the said commissioners shall in that respect prescribe, proceed to ascertain and assess the value of the property in the several parishes of such union rateable to the relief of the poor, and to cause to be made such surveys and valuations of the said property, or any part thereof, as may be necessary, from time to time, to make a fair and just assessment upon the said united parishes in respect of such property so rateable as aforesaid; and all rates grounded on every such valuation or assessment shall be made, allowed, published, and recovered in such and the same manner as rates for the relief of the poor are now by law made, allowed, published and recovered; and the rate-payers shall have the like power of appeal against such last-mentioned rates as any persons now have against rates made for the relief of the poor.

Rates grounded
on such assessment
to be allowed as
poor rates.

In such cases all
expenditure for
the poor to be in
common.

36. And be it further enacted, that from and after any such common rate shall have come into operation, the proportions of contribution fixed at the period of uniting such parishes, or existing at the time of such last-mentioned agreement for a common rate, shall wholly cease; and all expenditure in respect of the poor of such union, or chargeable in any way on the poor rates of the respective parishes

thereof, shall be deemed and be the common expenditure of such union, and be chargeable upon and paid out of the common or general fund to be raised upon such parishes under such common rate, according to the valuation or assessment of the rateable property in such parishes so ascertained, confirmed, and allowed by the said justices from time to time in manner hereinbefore provided: provided always, that the expense of every such valuation shall at all times be a charge on the common rate of such parishes: provided always that in case any parish of any union, at the period of entering into such agreement for the purposes of settlement or a common rate, shall not be represented by a guardian elected solely by such parish such parish shall not be bound by any such agreement, unless a majority of the owners of property and rate-payers in such parish, entitled to vote in the manner provided by this act, shall, by their votes in writing, testify their assent to such agreement, in such form as the said commissioners shall prescribe; and in case such assent shall not be so given, such parish shall be wholly omitted from such agreement, and be liable to pay such proportion only of the common assessment as it was bound to pay upon the forming of the union of such parishes.

37. And be it further enacted, that from and after the passing of this act, no union or incorporation of parishes shall be formed under the provisions of the said act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, without the previous consent of the said commissioners testified under their hands and seal.

38. And be it further enacted, that where any parishes shall be united by order or with the concurrence of the said commissioners for the administration of the laws for the relief of the poor, a board of guardians of the poor for such union [shall be constituted and chosen, and the workhouse or workhouses of such union shall be governed, and the relief of the poor in such union shall be administered, by such board of guardians; and the said guardians shall be elected by the rate-payers, and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively; and the said commissioners shall determine the number and prescribe the duties of the guardians to be elected in each union, and also fix a qualification, without which no person shall be eligible as such guardian, such qualification to consist in being rated to the poor rate of some parish or parishes in such union, but not so as to require a qualification exceeding the annual rental of forty pounds, and shall also determine the number of guardians which shall be elected for any one or more of such parishes, having due regard to the circumstances of each such parish; provided always, that one or more guardians shall be elected for each parish included in such union; and such guardians, when so elected, shall continue in office until the twenty-fifth day of March next following their appointment, or until others are appointed in their stead, and on such twenty-fifth day of March, or if that day should fall on a Sunday or Good Friday, then on the day next following, or within fourteen days next after the said twenty-fifth day of March in every year, such guardians shall go out of office, and the guardians for the ensuing year shall be chosen; and in the event of any vacancy occurring in such board, by the death, removal or resignation, or refusal or disqualification to act of any elected guardian between the periods of such first and the next and any subsequent annual election, or in case the full number of guardians shall not be duly elected at such subsequent election of guardians for the time being, the other or remaining members of the said board shall continue to act until the next election, or until the completion of the said board, as if no such vacancy had occurred, and as if the number of such board were complete; and every justice of the peace residing in any such parish, and acting for the county, riding or division in which the same may be situated, shall be an ex officio guardian of such united or common workhouses, and shall, until such board of guardians shall be duly elected and constituted as aforesaid, and also, in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders, and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall ex officio be and be entitled, if he think fit, to act as a member of such board, in addition to and in like manner as such elected guardians: provided always, that, except where otherwise ordered by the said commissioners, and also except for the purpose of consenting to the dissolution or alteration of any union or any addition thereto, or to the formation of any union for the purposes of settlement or rating, no ex officio or other guardian of any such board as aforesaid shall have power to act in virtue of such office, except as a member and at a meet-

4 & 5 W. 4, c. 76.

Expense of valuation.

Proviso for consent of parishes not represented by guardian.

No union to be so formed without consent of commissioners.

Constitution and election of board of guardians for unions.

No guardian to have power except at a local board, unless otherwise directed by the commissioners.

4 & 5 W. 4, c. 76.

Guardians may be re-elected.

The like for single parishes.

At elections of guardians votes to be taken in writing, and owners as well as occupiers to vote.

58 G. 3, c. 69.

Scale of voting.

Votes may be given by proxy.

No rate-payer to vote unless rated one year.

ing of such board ; and no act of any such meeting shall be valid unless three members shall be present and concur therein : provided also, that nothing herein contained shall prevent such owners and rate-payers from re-electing the same persons or any or either of them to be guardians for the year next ensuing, nor from electing as a guardian any person who may already have been chosen as a guardian of any other parish.

39. And be it further enacted, that if the said commissioners shall, by any order under their hands and seal, direct that the administration of the laws for the relief of the poor of any single parish should be governed and administered by a board of guardians, then such board shall be elected and constituted, and authorized and entitled to act, for such single parish, in like manner in all respects as is herein-before enacted and provided in respect to a board of guardians for united parishes ; and every justice of the peace resident therein, and acting for the county, riding, or division in which the same is situated, shall be and may act as an ex officio member of such board.

40. And be it enacted, that in all cases of the election of guardians under this act, or wherever the consent of the owners of property or rate-payers in any parish or union shall be required for any of the purposes of this act, except when otherwise expressly provided for in this act, the votes of such owners and rate-payers shall be given or taken in writing, collected, and returned, in such manner as the said commissioners shall direct ; and in every such case the owner, as well as the rate-payer, in respect of any property in such parish or union, shall be entitled to vote, and the owner shall have the same number and proportion of votes respectively as is provided for inhabitants and other persons in and by an act made and passed in the fifty-eighth year of the reign of his said late Majesty King George the Third, intituled, " An Act for the Regulation of Parish Vestries " and in and by an act to amend the same, made and passed in the fifty-ninth year of his said late majesty ; and the rate-payers under two hundred pounds shall each have a single vote : and the rate-payers rated at two hundred pounds or more, but under four hundred pounds, shall each have two votes, and the rate-payers rated at four hundred pounds or more, shall each have three votes ; and the majority of the votes of such owners and rate-payers which shall be actually collected and returned shall in every such case be binding on such parish : and for the purpose of ascertaining the number of votes to which each such owner shall be entitled, the aggregate amount of the assessment for the time being of any property belonging to such owner in such parish, or on any person or persons in respect of the same, to the poor-rate, shall be deemed to be and be taken as the annual value of such property to such owner ; and where any such owner shall be the bonâ fide occupier of any such property, he shall be entitled to vote as well in respect of his occupation as of his being such owner : provided always, that it shall be lawful for any owner from time to time, by writing under his hand, to appoint any person to vote as his proxy ; and every such appointment shall remain in force until revoked or recalled by such owner ; but no owner shall be entitled to vote, either in person or proxy, unless he shall, previous to the day on which he shall claim to vote, have given a statement in writing of his name and address, and the description of the property in the parish as owner whereof, or proxy for the owner whereof, he claims to vote, and if such proxy, the original or an attested copy of the writing appointing him such proxy, to the overseers of such parish ; and the said overseers are hereby required to enter in the rate books of such parish, or in some other book to be from time to time provided for that purpose, the names and addresses of the owners and proxies who shall send such statements, and the assessment of the rate for the relief of the poor of the property in respect whereof they respectively claim to vote : provided also, that every person who shall not vote, or who shall not comply with the directions to be made by the said commissioners for the giving, taking, or returning of votes, shall be omitted in the calculation of votes, and considered as having had no vote on the question whereon he might have voted : provided also, that no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this act, unless he shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate-payer, and shall have paid the parochial rates and assessments made and assessed upon him for the period of one whole year, as well as those due from him at the time of so voting or acting, except such as shall have been made or become due within the six months immediately preceding such voting or acting : provided always, that in cases of property belonging to any corporation aggregate, or to any joint stock or other company, no member of such corporation, or proprietor of or interested in such joint stock or other company, shall be entitled

to vote as such owner in respect thereof; but any officer of such corporation, joint stock, or other company, whose name shall be entered by the direction of the governing body of such corporation or company in the books of the parish, in the manner herein-before directed with respect to the owner of property, shall be entitled to vote in respect of such property in the same manner as if he were the owner thereof.

4 & 5 W. 4, c. 76.

41. And be it further enacted, that all elections of guardians, visitors, and other officers, for the execution of any of the powers or purposes of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or of any local act of parliament relating to poorhouses, workhouses, or the relief of the poor, or any act to alter or amend the same respectively, shall hereafter, so far as the said commissioners shall direct, be made and conducted according to the provisions of this act: provided always, that it shall be lawful for the said commissioners, if they shall so think fit, from time to time, with the consent of the majority of the owners of property and rate-payers of any parish, or of any union now existing or to be formed under the provisions of this act, to alter the period for which the guardians to be appointed under the provisions of this act for such parish or union, or any of them, would under the provisions of this act hold office, for such other period or periods as to the said commissioners with such consent as aforesaid, shall seem expedient, and also to make such alterations in the number, mode of appointment, removal, and period of service of the guardians, or any of them, of any parish, or of any union now existing or to be formed under the provisions of this act, as to the said commissioners, with such consent as aforesaid, shall deem expedient.

Elections of guardians, visitors, and other officers under the act 22 G. 3, c. 83, or any local act to be made according to the provisions of this act.

42. And be it further enacted, that the said commissioners may and are hereby authorized, by writing under their hands and seal, to make rules, orders, and regulations, to be observed and enforced at every workhouse already established by virtue of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled, "An Act for the better Relief and Employment of the Poor," or any general or local act of parliament, or hereafter to be established by virtue of such acts, or of any of them, or of this or any other act of parliament relating to the relief of the poor, for the government thereof, and the nature and amount of the relief to be given to and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to suspend, alter, vary, amend, or rescind the same, and make any new or other rules, orders, and regulations, to be observed and enforced as aforesaid, as they from time to time shall think fit, and to alter, at their discretion, any of the rules, orders, and regulations contained in the schedule to the said recited act, and also to alter or rescind any rules, orders, and regulations heretofore made in pursuance of the said recited act, or any local act of parliament relating to workhouses or the relief of the poor: and that all rules, orders, and regulations to be from time to time made by the said commissioners under the authority of this act shall be valid and binding, and shall be obeyed and observe as if the same were specifically made by and embodied in this act; subject, nevertheless, to the said power of the said commissioners from time to time to rescind, amend, suspend, or alter the same: provided always, that if any such rule, order, or regulation shall be, at the time of issuing the same, directed to and affect more than one union, the same shall be considered as a general rule, and subject and liable to all the provisions in this act contained respecting general rules.

Commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force or to be made hereafter.

43. And be it further enacted, that where any rules, orders, or regulations, or any bye-laws, shall be made or directed by the said commissioners to be observed or enforced in any workhouse, it shall and may be lawful for any justice of the peace acting in and for the county, place, or jurisdiction in which such workhouse shall be situate, to visit, inspect, and examine such workhouse at such times as he shall think proper, for the purpose of ascertaining whether such rules, orders, regulations, or bye-laws, are or have been duly observed and obeyed in such workhouse, as well as for such other purposes as justices are now authorized to visit workhouses under and by virtue of a certain act made and passed in the thirtieth year of the reign of his said late Majesty King George the Third, intituled, "An Act to empower Justices and other Persons to Visit Parish Workhouses or Poorhouses, and Examine and Certify the State and Condition of the Poor therein to the Quarter Sessions;" and if in the opinion of such justice such rules, orders, regulations, or bye-laws, or any of them, have not been duly observed and obeyed in such workhouse, it shall be lawful for such justice to summon the party offending in such respect to appear before any two justices of the peace, to answer any

Rules, &c. affecting more than one union to be deemed general rules.

Justices empowered to see bye-laws enforced, and to visit workhouses, pursuant to 30 G. 3, c. 49.

4 & 5 W. 4, c. 76.

The power given to justices, &c. to visit workhouses reserved where commissioners' rules, &c. are not in force.

Buildings taken for workhouses to be within the jurisdiction of the place to which they belong, though situated without.

No lunatic, insane person, or dangerous idiot, to be detained in a workhouse more than fourteen days.

Commissioners may direct overseers and guardians to appoint paid officers for parishes or unions;

and fix their duties, and the mode of appointment and dismissal, and the security; and regulate their salaries.

Overseers, &c. to pass accounts quarterly.

complaint touching the non-observance of such rules, orders, regulations, and bye-laws, or any of them, and upon conviction before such two justices of the party so offending, such party shall forfeit and be liable to such penalties and punishments as are hereinafter prescribed and provided against parties wilfully neglecting or disobeying the rules, orders, or regulations of the said commissioners: provided always, that where no such rules, orders, regulations, or bye-laws, shall have been directed by the said commissioners to be enforced and observed in the workhouse of any parish, nothing in this act contained shall be construed to restrain or prevent any justice of the peace, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and certifying the state and condition of the same, and of the poor therein, in such manner as they or any of them are authorized to do in and by the said last-recited act.

44. Whereas the jurisdiction of certain cities, boroughs, and corporate towns, is not always co-extensive with the parish in which it exists; be it therefore enacted, that every house or building which shall be erected, purchased, or hired as and for a workhouse, together with all premises and appurtenances thereto belonging, and the land or lands occupied therewith, shall be deemed and held to be within and subject to the local jurisdiction of such incorporated city, borough, or town to which they may respectively belong, though the same may be situated in such part of the respective parishes as may not be within the chartered boundaries thereof.

45. And be it further enacted, that nothing in this act contained shall authorize the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: provided always, that nothing herein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum.

46. And be it further enacted, that it shall be lawful for the said commissioners, as and when they shall see fit, by order under their hands and seal, to direct the overseers or guardians of any parish or union, or of so many parishes or unions as the said commissioners may in such order specify and declare to be united for the purpose only of appointing and paying officers, to appoint such paid officers with such qualifications as the said commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union, or united parishes, and otherwise carrying the provisions of this act into execution; and the said commissioners may and they are hereby empowered to define and specify and direct the execution of the respective duties of such officers, and the places or limits within which the same shall be performed, and direct the mode of the appointment and determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by such of the said officers as the said commissioners shall think ought to give security, and, when the said commissioners may see occasion, to regulate the amount of salaries payable to such officers respectively, and the time and mode of payment thereof, and the proportions in which such respective parishes or unions shall contribute to such payment; and such salaries shall be chargeable upon and payable out of the poor rates of such parish or union, or respective parishes, in the manner and proportions fixed by the said commissioners, and shall be recoverable against the overseers or guardians of such parish or union, or parishes, by all such ways and means as the salaries of assistant overseers or other paid officers of any parish or union are recoverable by law; and all such payments shall be valid, and shall be allowed in the accounts of the overseers or guardians paying the same.

47. And be it further enacted, that every overseer, treasurer, or other person having the collection, receipt, or distribution of the monies assessed for the relief of the poor in any parish or union, or holding or accountable for any balance or sum of money, or any books, deeds, papers, goods, or chattels relating to the relief of the poor, or the collection or distribution of the poor rate of any parish or union, shall once in every quarter, in addition to the annual account now by law required, and where the rules, orders, and regulations of the said commissioners shall have come in force, then as often as the said rules, orders, and regulations shall direct, but not less than once in every quarter, make and render to the guardians, auditors, or such other persons as by virtue of any statute or custom, or of the said rules, orders, or regulations, may be appointed to examine, audit, allow, or disallow such accounts, or in default of any such guardian, auditor, or other person being so appointed as aforesaid, then to the justices of the peace at their petty sessions for

the division in which such parish or union shall be situate, a full and distinct account in writing of all monies, matters, and things committed to their charge, or received, held, or expended by them on behalf of any such parish or union, and if thereunto required by the justices, guardians, auditors, or other persons authorized in that behalf, shall verify on oath the truth of all such accounts and statements from time to time respectively, or subscribe a declaration to the truth thereof, in manner and under the penalties in this act provided for parties giving false evidence or refusing to give evidence under the provisions of this act; and all balances due from any guardian, treasurer, overseer or assistant overseer, or other person having the control and distribution of the poor rate, or accountable for such balances, may be recovered in the same manner as any penalties and forfeitures are recoverable under this act: provided, nevertheless, that no such proceeding shall exonerate or discharge the liability of the surety of any such treasurer, overseer, assistant overseer, or other person as aforesaid.

4 & 5 W. 4, c. 76.

Recovery of
balancesSurety not to be
discharged.

48. And be it further enacted, that the said commissioners may and they are hereby authorized and empowered, as and when they shall think proper, by order under their hands and seal, either upon or without any suggestion or complaint in that behalf from the overseers or guardians of any parish or union, to remove any master of any workhouse, or assistant overseer, or other paid officer of any parish or union whom they shall deem unfit for or incompetent to discharge the duties of any such office, or who shall at any time refuse or wilfully neglect to obey and carry into effect any of the rules, orders, regulations, or bye-laws of the said commissioners, whether such union shall have been made or such officer appointed before or after the passing of this act, and to require from time to time the persons competent in that behalf to appoint a fit and proper person in his room; and that any person so removed shall not be competent to be appointed to or to fill any paid office connected with the relief of the poor in any such parish or union, except with the consent of the said commissioners under their hands and seal: provided always, that no person shall be eligible to hold any parish office, or have the management of the poor in any way whatever, who shall have been convicted of felony, fraud, or perjury.

Masters of work-
houses and parish
officers to be
under order of
board, and re-
movable by them.

49. And be it further enacted, that any contract which shall be entered into by or on behalf of any parish or union, for or relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating to or connected with the general management of the poor, which shall not be made and entered into in conformity with the rules, orders, or regulations of the said commissioners in that behalf in force at the time of making and entering into the same, or otherwise sanctioned by them, shall be voidable, and, if the said commissioners shall so direct, shall be null and void; and all payments made under or in pursuance of any contract not made and entered into in conformity with such rules, orders, or regulations, at any period after the said commissioners shall have declared the same to be null and void as aforesaid, shall be disallowed in passing the accounts of the overseer, guardian, or other officer by whom such payments shall have been made.

Contracts not to
be valid unless
conformable to
the rules of com-
missioners.

50. And be it further enacted, that from and after the passing of this act a certain act made and passed in the forty-fifth year of the reign of his said late Majesty King George the Third, intituled, "An Act to amend an Act made in the ninth year of King George the First, for Amending the Laws relating to the Settlement, Employment, and Relief of the Poor, so far as the same respects Contracts to be entered into for the Maintenance and Employment of the Poor," shall be and the same is hereby repealed: provided always, that nothing in this act contained shall extend or be construed to extend to affect or make void any bond or other security which shall have been entered into or given before the passing of this act, under or in pursuance of the provisions of the said act hereby repealed.

Repeal of 45
Geo. 3, c. 54, as
to contracts.

51. And be it further enacted, that so much of a certain act made and passed in the fifty-fifth year of the reign of his said late Majesty King George the Third, intituled "An act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the thirty-sixth year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a longer Period than one Month at a time; and for other purposes therein mentioned, relating to the Poor," as inflicts a penalty on persons having the management of the poor if concerned in providing or in any contract for the supply of any goods, materials, or provisions for the use of any workhouse or workhouses, or otherwise for the support or maintenance of the poor for their own profit, and all remedies for the recovery of such penalties, shall apply, and the same are hereby extended and made applicable to every commissioner,

The penalty im-
posed by 55 Geo.
3. c. 137, on per-
sons having the
management of
the poor being
concerned in any
contract extended
to persons ap-
pointed under this
act.

4 & 5 W. 4, c. 76.

Commissioners to regulate the relief to able-bodied paupers and their families out of the workhouse.

Relief contrary to their regulations to be disallowed.

But overseers may delay the operation of such regulations under special circumstances, and make report thereof to commissioners.

If commissioners disapprove of delay, they may fix a day from which all such relief shall be disallowed.

Cases of emergency.

Repeal of 36 Geo. 3, c. 23; 55 Geo. 3, c. 137, s. 3 & 4; and 59 Geo. 3, c. 12, s. 2, & 5.

assistant commissioner, guardian, treasurer, master of a workhouse, or other officer to be appointed under the provisions of this act.

51. And whereas a practice has obtained of giving relief to persons or their families, who at the time of applying for or receiving such relief were wholly or partially in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects; and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid; be it further enacted, that from and after the passing of this act it shall be lawful for the said commissioners, by such rules, orders, or regulations as they may think fit, to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse of such parish or union, by payments in money, or with food or clothing in kind, or partly in kind and partly in money, and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner such out-door relief may be afforded; and all relief which shall be given by any overseer, guardian, or other person having the control or distribution of the funds of such parish or union, contrary to such orders or regulations, shall be, and the same is hereby declared to be unlawful, and shall be disallowed in the accounts of the person giving the same, subject to the exceptions hereinafter mentioned; provided always, that in case the overseers or guardians of any parish or union to which such orders or regulations shall be addressed or directed shall, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application and enforcing of such orders or regulations, or of any part thereof, at the time or in the manner prescribed by the said commissioners, would be inexpedient, it shall be lawful for such overseers or guardians to delay the operation of such orders or regulations, or of any part thereof, for any period not exceeding the space of thirty days, to be reckoned from the day of the receipt of such orders or regulations; and such overseers or guardians shall, twenty days at the least before the expiration of such thirty days, make a statement and report of such special circumstances to the said commissioners; and all relief which shall be given by such overseers or guardians, before an answer to such report shall have been returned by the said commissioners, if otherwise lawful, shall not be deemed unlawful, although the same shall have been given contrary to such orders or regulations, or any of them; but in case the said commissioners shall disapprove of such delay, or think that for the future such orders or regulations ought to come into operation, notwithstanding the special circumstances alleged by such overseer or guardian, it shall be lawful for the said commissioners, by a peremptory order, to direct that from and after a day to be fixed thereby such orders and regulations, or such parts or modifications thereof as they may think expedient and proper, shall be enforced and observed by such overseers and guardians; and if any allowance be made or relief given by such overseers or guardians after the said last-mentioned period, contrary to any such last-mentioned order, the amount of the relief or allowance so given shall be disallowed in the accounts of the party giving the same: provided also, that a quarterly report of all such cases as shall occur in any quarter shall, at the end of every such quarter, be laid by the said commissioners before one of his majesty's principal secretaries of state: provided also, that in case the overseers or guardians of any parish or union in which such orders or regulations shall be in force shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure, or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid, then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed.

53. And be it further enacted, that an act passed in the thirty-sixth year of the reign of his late Majesty king George the Third, intituled "An Act to amend so much of an Act made in the ninth year of the reign of King George the First, intituled 'An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor,' as prevents the distributing occasional Relief to poor persons in their own Houses, under certain circumstances and in certain cases;" and so much of an act made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their use, to alter and amend so much of an Act of the thirty-sixth year of his present Majesty as restrains Justices

of the Peace from ordering Relief to poor Persons in certain cases for a longer period than One Month at a time, and for other purposes therein mentioned relating to the Poor," as extends the period for which occasional relief may be ordered by any justice, or justices to poor persons at their own homes; and so much of the said act made and passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor," as empowers any justice or justices to order relief in certain cases for a limited time, or in cases of urgent necessity, or in cases where parishes are under the management of guardians, governors, or directors appointed by special or local acts, or in cases where parishes have not a select vestry, shall be and the same are hereby repealed.

4 & 5 W. 4, c. 76.

54. And be it further enacted, that from and after the passing of this act, the ordering, giving and directing of all relief to the poor of any parish, which according to the provisions of any of the said recited acts, or of an act passed in the first and second years of the reign of his present Majesty, intituled "An Act for the better regulating of Vestries, and for the appointment of Auditors of Accounts in certain Parishes in England and Wales," or of this act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not, (but subject in all cases to, and saving and excepting the powers of, the said commissioners appointed under this act,) shall appertain and belong exclusively to such guardians of the poor, or select vestry, according to the respective provisions of the acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds which such justices shall order: provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor-rates of any such parish, except as hereinbefore provided.

No relief to be in future given, except by board of guardians, &c. 1 & 2 Will. 4, c. 80.

Any justice may give order for medical relief in dangerous illness.

55. And be it enacted, that from and after the passing of this act the master of every workhouse, or such other paid officer of the parish or union as the said commissioners may direct, shall, on such day and in such form as the said commissioners shall appoint, take an account of, and register in a book to be provided at the expense of the parish or union to which such workhouse shall belong, and to be kept specially for that purpose, the name of every poor person who shall on such days be in the receipt of relief at or in such workhouse, together with such particulars respecting the families and settlement of every such poor person, and his and their relief and employment, as the said commissioners shall think fit; and in like manner, on such day as the said commissioners shall appoint, the overseer of the poor of every such parish shall register in a book, to be provided and kept as aforesaid, the name of every poor person then in the receipt of relief in such parish out of the workhouse, together with such particulars respecting the family and settlement of every such poor person, and his and her relief and employments, as the said commissioners shall think fit; and after such account shall have been so taken and registered as aforesaid a similar register and account shall be kept by the like persons respectively of all persons who shall receive relief at or in or out of a workhouse, when and as often as such relief shall be granted.

Masters of workhouses and overseers to keep registers.

56. And be it further enacted, that from and after the passing of this act that all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child or children, as the case may be, and any relief given to or on account of any child or

Poor persons liable for relief to wife or children.

4 & 5 W. 4, c. 76.

43 Eliz. c. 2.

Husband liable to maintain children of wife born before marriage.

Such relief as commissioners may direct to be considered as loan.

Power to justices to attach wages in hands of master or employer.

Mode of proceeding against masters for recovery thereof.

Repeal of so much of 43 G. 3, c. 47, as requires relief to be given to wives and families of substitutes, hired men, or volunteers of militia.

children under the age of sixteen of any widow, shall be considered as given to such widow: provided always, that nothing herein contained shall discharge the father and grandfather, mother and grandmother, of any poor child, from their liability to relieve and maintain such poor child in pursuance of the provisions of a certain act of parliament passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled "An Act for the Relief of the Poor."

57. And be it further enacted, that every man who from and after the passing of this act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children, until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children; and such child or children shall, for the purposes of this act, be deemed a part of such husband's family accordingly.

58. And be it further enacted, that from and after the passing of this act, any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the said commissioners shall by any rule, order, or regulation declare or direct to be given or considered as given by way of loan, and whether any receipt for such relief, or engagement to repay the same, or the cost price thereof, or any part thereof, shall have been given or not by the person to or on account of whom the same shall have been so given, shall be considered and the same is hereby declared to be a loan to such poor person.

59. And be it further enacted, that in all cases where any relief shall have been given by way of loan, or where any relief, or the cost price thereof, shall be treated as a loan, under the rules, orders, and regulations of the said commissioners, or the provisions of this act, it shall be lawful for any justice, upon the application of the overseers or guardians of the parish or union providing such relief, and upon proof of the same having been given to or on account of any such person, his wife or family, as aforesaid, and of the same, or any part thereof, still remaining due, to issue a summons, requiring such person, as well as the master or employer of such person, or some person on his behalf, to appear before any two justices, at a time and place to be named in such summons, to show cause why any wages due, or which may from time to time become due, from such master or employer, should not be paid over, in whole or in part, to such overseers or guardians; and if no sufficient cause be shown to the contrary, or if such person, or some one on his behalf, shall not appear on the return of such summons, then the said justices shall, by order under their hands, direct the master or employer for the time being, from whom any wages shall be due or from time to time become due or payable to such poor person, to pay, either in one sum, or by such weekly or other instalments as the said justices shall in their discretion think fit, taking into consideration the circumstances of such poor person and his family, out of such wages, to such overseers or guardians, the amount of such relief, or so much thereof as shall from time to time be due or unpaid; and the payment to and receipt of any such overseer or guardian shall be a good discharge to such master or employer for so much of any such wages as shall be so paid by virtue of any such order; and if any such master or employer shall refuse or neglect to pay to the overseer or guardian producing any such order the money thereby directed to be paid, according to the terms of such order, and at the periods thereby fixed for such payment, the same may be levied and recovered, and the payment thereof from time to time enforced against such master or employer, in such and the like manner as penalties and forfeitures are recoverable under this act.

60. And be it further enacted, that from and after the passing of this act so much of an act passed in the forty-third year of the reign of his said late Majesty King George the Third, intituled "An Act for consolidating and amending the several Laws for providing Relief for the Families of Militiamen in England when called out into actual Service," as directs overseers of the poor, by order of some one justice of the peace, to pay to the family of any person serving or enrolled as a balloted man, substitute, hired man, or volunteer in the militia of England, a weekly allowance, or as authorizes any justice or justices to order such allowance to be paid under the rules and conditions in the said recited act provided, or as in any way discharges such balloted man, substitute, hired man, or volunteer from the liability to maintain or repay the costs of maintenance of his family or any part thereof, or as prevents such families or any part thereof from being removable to their place of legal settlement, or sent to any workhouse, by reason of their re-

ceiving any allowance or being chargeable, shall be and the same is hereby repealed. 4 & 5 W. 4, c. 76.

61. And be it further enacted, that from and after the period at which any rule, order, or regulation of the said commissioners shall come into operation for the binding of poor children apprentices, in addition to such assent or consent, order or allowance of justices, as are now required by law, such justices or any one justice are and is hereby authorized and required to examine and ascertain whether the rules, orders, or regulations of the said commissioners then in force for the binding of poor children apprentices have been complied with, and to certify the same at the foot of every such contract or indenture, and of the counterpart thereof, in such form and manner as the said commissioners by such rules, orders, or regulations may direct, and until so certified no such contract or indenture of apprenticeship shall be valid: provided nevertheless, that nothing in this act, or in any rule, order, or regulation of the said commissioners, shall affect the jurisdiction of any justices of the peace over any master or apprentice during the period of apprenticeship.

Justices to certify that rules of commissioners have been complied with in binding poor children apprentices.

Justice's power reserved as between master and apprentice.

62. And be it further enacted, that it shall and may be lawful for the rate-payers in any parish, and such of the owners of property therein as shall, in manner hereinbefore mentioned, have required their names to be entered in the rate books of such parishes respectively as entitled to vote as owners, assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place of holding such meeting, and the purpose for which the same is intended to be held, shall have been given in like manner as notices of vestry meetings are published and given, to direct that such sum or sums of money, not exceeding half the average yearly rate for the three preceding years, as the said owners and rate-payers so assembled at such meeting may think proper, shall be raised or borrowed as a fund, or in aid of any fund or contribution for defraying the expenses of the emigration of poor persons having settlements in such parish, and willing to emigrate, to be paid out of or charged upon the rates raised or to be raised for the relief of the poor in such parish, and to be applied under and according to such rules, orders, and regulations as the said commissioners shall in that behalf direct: provided always, that no such direction for raising money for such purpose as aforesaid shall have any force or effect unless and until confirmed by the said commissioners, and that the time to be limited for the repayment of any sum so charged on such rates as aforesaid shall in no case exceed the period of five years from the time of borrowing the same: provided also, that all sums of money so raised as last hereinbefore mentioned, and advanced by way of loan, for the purposes of emigration, or such proportion thereof as the said commissioners shall by any rule, order, or regulation from time to time direct, shall be recoverable against any such person, being above the age of twenty-one years, who or whose family, or any part thereof, having consented to emigrate, shall refuse to emigrate after such expenses shall have been so incurred, or having emigrated shall return, in such and the like manner as is hereinbefore provided with respect to relief, or the cost price of relief, given or considered to be given by way of loan to any person, his wife or family.

Power to owners and rate-payers to raise money on security of rates for purposes of emigration.

63. And be it further enacted, that where it shall be lawful, under the provisions of any of the herein recited acts, or of any local act, or of this act, to raise or borrow any sum or sums of money for the purpose of purchasing, building, altering, or enlarging any workhouse or workhouses in any parish or union, or for purchasing land whereon to build the same, or for defraying the expenses of the emigration of poor persons having settlements in any parish, and being willing to emigrate, it shall be lawful for the overseers or guardians of such parish or union, with the consent of the said commissioners, to be testified under their hands and seal, to make application for an advance of any sum necessary for any such purposes to the commissioners appointed under an act made and passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act to authorize the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund, to a limited Amount, for the carrying on of Public Works and Fisheries in the United Kingdom, and Employment of the Poor in Great Britain, in manner therein mentioned," and of any act or acts passed for amending or continuing the same; and the said Exchequer Bill Loan Commissioners are hereby empowered to make such advances, upon any such application as aforesaid, upon the security of the rates for the relief of the poor in such parish or union, and without requiring any further or other security than a charge on such rates.

Overseers may apply to commissioners of exchequer bills under act 57 G. 3, c. 34, for advance of money.

64. And be it further enacted, that from and after the passing of this act no settlement shall be acquired by hiring and service, or by residence under the same, or by serving an office.

Repeal of settlement by hiring and service.

4 & 5 W. 4, c. 76.

No settlement incomplete under hiring and service to be completed.

No settlement acquired without paying poor rate; nor by being apprenticed in the sea service;

nor by possession longer than the person shall inhabit within ten miles thereof.

Repeal of acts relating to liability and punishment of putative father, and punishment of mother of illegitimate children.

Securities and recognizances for indemnity of parishes against children likely to be born bastards to be null and void.

Persons in custody for not giving indemnity to be discharged.

Mother of illegitimate children bound to maintain the same.

Court of quarter sessions, on appli-

65. And be it further enacted, that no person under any contract of hiring and service not completed at the time of the passing of this act shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same.

66. And be it further enacted, that from and after the passing of this act no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and shall have paid the same, in respect of such tenement, for one year.

67. And be it further enacted, that from and after the passing of this act no settlement shall be acquired by being apprenticed in the sea service, or to a householder exercising the trade of the seas as a fisherman or otherwise, nor by any person now being such an apprentice in respect of such apprenticeship.

68. And be it further enacted, that no person shall be deemed, adjudged, or taken to retain any settlement, gained by virtue of any possession of any estate or interest in any parish, for any longer or further time than such person shall inhabit within ten miles thereof; and in case such person shall cease to inhabit within such distance, and thereafter become chargeable, such person shall be liable to be removed to the parish wherein, previously to such inhabitancy, he may have been legally settled, or in case he may have subsequently to such inhabitancy gained a legal settlement in some other parish, then to such other parish.

69. And be it further enacted, that from and after the passing of this act so much of any act or acts of parliament as enables any single woman to charge any person with having gotten her with any child of which she shall then be pregnant, or as renders any person so charged liable to be apprehended or committed, or required to give security, on any such charge, or as enables the mother of any bastard child or children to charge or affiliate any such child or children on any person as the reputed or putative father thereof, or as enables any overseer or guardian to charge or make complaint against any person as such reputed or putative father, and to require him to be charged with or contribute to the expenses attending the birth, sustentation, or maintenance of any such child or children, or to be imprisoned or otherwise punished for not contributing thereto, or as in any way renders such reputed or putative father liable to punishment or contribution as such, or as enables churchwardens and overseers, by the order of any two justices of the peace, confirmed by the sessions, to take, seize, and dispose of the goods and chattels, or to receive the annual rents or profits of the lands of any putative father of bastard children, and so much of any such act or acts as renders an unmarried woman with child liable as such to be summoned, examined, or removed, or as renders the mother of any bastard liable as such to be imprisoned or otherwise punished, shall, so far as respects any child which shall be likely to be born, or shall be born a bastard, after the passing of this act, or the mother or putative father of such child, be and the same is hereby repealed.

70. And be it further enacted, that every security given or recognizance entered into by any person or persons, or his or their surety, before the passing of this act, to indemnify any parish or place as to any child or children likely to be born a bastard or bastards, whereof any single woman shall be pregnant at the time of the passing of this act, or to abide and perform such order or orders as might have been made touching such child or children, pursuant to an act made and passed in the eighteenth year of the reign of her said late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, shall be and the same are hereby declared null and void; and every person who shall at the time of the passing of this act be in custody upon the commitment of any justice or justices for not having given such security or entered into such recognizance, shall be discharged upon the application of such person by any one of the visiting justices of the gaol in which such person shall be in custody under any such commitment.

71. And be it further enacted, that every child, which shall be born a bastard after the passing of this act, shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen, or shall acquire a settlement in its own right; and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family, until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother; provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female.

72. And be it enacted, that when any child shall hereafter be born a bastard, and shall, by reason of the inability of the mother of such child to provide for its

maintenance, become chargeable to any parish, the overseers or guardians of such parish, or the guardians of any union in which such parish may be situate, may, if they think proper, after diligent inquiry as to the father of such child, apply to the next general quarter sessions of the peace within the jurisdiction of which such parish or union shall be situate, after such child shall have become chargeable, for an order upon the person whom they shall charge with being the putative father of such child, to reimburse such parish or union for its maintenance and support; and the court to which such application shall be made shall proceed to hear evidence thereon, and if it shall be satisfied, after hearing both parties, that the person so charged is really and in truth the father of such child, it shall make such order upon such person in that respect as to such court shall appear to be just and reasonable under all the circumstances of the case: provided always, that no such order shall be made unless the evidence of the mother of such bastard child shall be corroborated in some material particular by other testimony to the satisfaction of such court; provided also, that such order shall in no case exceed the actual expense incurred or to be incurred for the maintenance and support of such bastard child while so chargeable, and shall continue in force only until such child shall attain the age of seven years, if he shall so long live: provided also, that no part of the monies paid by such putative father, in pursuance of such order, shall at any time be paid to the mother of such bastard child, nor in any way be applied to the maintenance and support of such mother.

4 & 5 W. 4, c. 76.

cation of overseers, &c. may make an order on putative father of child for its support.

Monies paid not applicable to support of mother.

73. And be it enacted, that no such application shall be heard at such sessions unless fourteen days notice shall have been given under the hands of such overseers or guardians to the person intended to be charged with being the father of such child of such intended application: and in case there shall not, previously to such sessions, have been sufficient time to give such notice, the hearing of such application shall be deferred to the next ensuing general quarter sessions: provided always, that whenever such application shall be heard, the costs of the maintenance of such bastard child shall, in case the court shall think fit to make an order thereon, be calculated from the birth of such bastard child, if such birth shall have taken place within six calendar months previous to such application being heard; but if such birth shall have taken place more than six calendar months previously to such application being heard, then from the day of the commencement of six calendar months next preceding the hearing of such application: provided also, that if upon the hearing of such application the court shall not think fit to make any order thereon, it shall order and direct that the full costs and charges incurred by the person so intended to be charged in resisting such application shall be paid by such overseers or guardians.

No application to be heard without fourteen days previous notice.

If application be heard, costs may be calculated from birth of bastard child, if within six months.

74. And be it enacted, that if such person so intended to be charged shall not appear by himself or his attorney at the time when such application shall come on to be heard before such court, according to such notice, such court shall nevertheless proceed to hear the same, unless such overseers or guardians shall produce an agreement under the hand of such person to abide by such order as such court shall make thereon, without the hearing of evidence by such court: provided always, that such court may, notwithstanding such agreement, require that evidence shall be given in support of such application, if it thinks fit, before such order is made.

In the event of party charged not appearing, court may nevertheless enter into the case.

75. And be it enacted, that whenever such overseers or guardians shall have determined to make such application as aforesaid, it shall be lawful for one justice of the peace, at the request of such overseers or guardians, to summon the person so intended to be charged with being the father of such bastard child to appear before him; and if such justice shall be satisfied that such person has any intention to abscond or keep out of the way, in order to avoid the consequences of such application, such justice may require such person to enter into a recognizance to appear and answer thereto, and in case such person shall refuse or neglect to enter into such recognizance, may commit such person to the goal or house of correction of the county, riding, or division within which such parish shall be situate, until he shall enter into such recognizance, or until such application shall be heard.

Party summoned, if suspected of intending to abscond, may be required to enter into a recognizance for his appearance.

76. And be it enacted, that if at any time after the expiration of one calendar month after an order shall have been made in pursuance of such application it shall appear to one justice, upon the oath of any one of such overseers or guardians, that the payments directed to be made by such order have not been made according thereto, and are in arrear, it shall be lawful for such justice or any other justice, by warrant under his hand seal, to cause such putative father of such bastard child to be brought before two justices of the peace; and in case such putative father shall refuse or neglect to make payment of such sum of money as shall appear to such justices to be due from him under such order, together with

When payments get into arrear, putative father may be proceeded against by distress or attachment of wages.

4&5 W.4, c.76. the costs of apprehension, it shall be lawful for such or any two justices to proceed to recover such sum and costs by distress and sale of the goods and chattels of such putative father, or by attaching the wages of such putative father for the recovery of such sum and costs, in the same manner as wages may be attached under the provisions of this act.

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief.

77. And be it further enacted, that it shall not be lawful for any person hereafter to be appointed in any parish or union to any office concerned in the administration of the laws for the relief of the poor, or for any person who after the twenty-fifth day of March one thousand eight hundred and thirty-five shall fill any such office, to furnish or supply, for his own profit or on his own account, any goods, materials or provision ordered to be given in parochial relief, or to furnish or supply any goods, materials, or provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union; and every person holding such office shall, on conviction before any two justices of the peace, be subject to a penalty of five pounds for such offence, one-half of which penalty shall be paid to the informer, and the other half in aid of the poor-rates of such parish or union.

Sums payable under 43 Eliz. c. 2, s. 7. by relations of poor persons, how recoverable.

78. And be it further enacted, that all sums of money which shall be assessed by any justices of the peace on the father, grandfather, mother, grandmother, child, or children of any poor person, for the relief or maintenance of such poor person, under or by virtue of the provisions of a certain act passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled "An Act for the Relief of the Poor," or of any act to amend the same, or of this act, and all penalties and forfeitures to which any person so assessed by such justices for such relief or maintenance, shall be liable for any default in paying the same by virtue of the provisions of any of the said recited acts or of this act, shall be recoverable against every person so assessed or charged, in like manner as penalties and forfeitures are recoverable under the provisions of this act.

No person to be removed till after notice of his being chargeable has been sent to the parish to which order of removal is directed.

79. And be it further enacted, that from and after the first day of November one thousand eight hundred and thirty-four no poor person shall be removed or removable, under any order of removal from any parish or workhouse, by reason of his being chargeable to or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: provided always that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired, or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal.

Such person may be removed if order submitted to;

but not in case of appeal.

In case of appeal the overseers to have access to such poor person touching his settlement.

80. And be it enacted, that the overseers or guardians of the parish giving such notice of appeal, or their attorney, or any other person authorized by them, shall, until such appeal shall have been heard and decided, at all proper times have free access to such poor person for the purpose of examining him touching his settlement; and in case it shall be necessary for the more effectual examination of such person that he should be taken out of the removing parish, such overseers or guardians shall be permitted to remove him therefrom for the time which may be necessary for that purpose: provided always, that the expense of such removal, and of his maintenance during the same, shall be defrayed by the appellant parish.

Grounds of appeal to be stated in notice.

81. And be it further enacted, that after the first day of November one thousand eight hundred and thirty-four, in every case where notice of appeal against such order shall be given, the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall with such notice, or fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal; and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid: provided always, that it shall not be lawful for the respondent or appellant

parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal, or of appeal against any order of removal, than those set forth in such respective order, examination, or statement as aforesaid. 4 & 5 W. 4, c. 76.

82. And be it further enacted, that upon every such appeal the court before whom the same shall be brought shall and may, if they think fit, order and direct the parish against which the same shall be decided to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof; and in case the overseers of the poor of the parish liable to pay the same, shall upon demand, and upon the production of such certificate, refuse or neglect to pay the same, the amount thereof may be recovered from such overseer in the same manner as any penalties or forfeitures are by this act recoverable. Parish losing appeal to pay such costs as court may direct.

83. And be it further enacted, that if either of the parties shall have included in the order or statement sent as hereinbefore directed any grounds of removal or of appeal, which shall in the opinion of the justices determining the appeal be frivolous and vexatious, such party shall be liable, at the discretion of the said justices, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered in the manner hereinbefore directed as to the other costs incurred by reason of such appeal. Party making frivolous or vexatious statement to pay costs.

84. And be it further enacted, that the parish to which any poor person whose settlement shall be in question at the time of granting relief shall be admitted or finally adjudged to belong, shall be chargeable with and liable to pay the cost and expense of the relief and maintenance of such poor person, and such cost and expense may be recovered against such parish in the same manner as any penalties or forfeitures are by this act recoverable: provided always, that such parish, if not the parish granting such relief, shall pay to the parish by which such relief shall be granted the cost and expense of such relief and maintenance from such time only as notice of such poor person having become chargeable shall have been sent by such relieving parish to the parish to which such poor person shall be so admitted or finally adjudged to belong: provided always, that no charges or expenses of relief or maintenance shall be recoverable under a suspended order of removal, unless notice of such order of removal, with a copy of the same, and of the examination upon which such order was made, shall have been given within ten days of such order being made to the overseers of the poor of the parish to whom such order is directed. Costs of relief to be paid by parish to which poor persons belong.

85. And be it enacted, that it shall be lawful for the said commissioners, and they are hereby empowered from time to time, as they may think fit, to require from all persons in whom any freehold, copyhold, or leasehold estates, or any other property or funds belonging to any parish, and held in trust for or applicable to the relief of the poor, or which may be applied in diminution of the poor-rate of such parish, shall be vested, or who shall be in the receipt of the rents, profits, or income of any such estate, property, or funds, a true and detailed account in writing of the place where such estate may be situate, or in what mode or on what security such other property or funds may be invested, with such details of the rents, profits, and income thereof, and of the appropriation of the same, and of all such other particulars relating thereto, as the said commissioners may direct and require; and such statement or a true copy thereof shall, under the regulations of the said commissioners, be open for the inspection of the owners of property and rate-payers in such parish: provided always, that nothing herein-before contained shall apply to any funds raised from time to time by the voluntary contributions of the inhabitants of any parish. Relief under suspended order not to be recoverable unless notice sent of such order.

86. And be it further enacted, that no advertisement inserted by or under the direction of the said commissioners in the London Gazette or any newspaper, for the purpose of carrying into effect any provisions of this act, nor any mortgage, bond, instrument, or any assignment thereof, given by way of security in pursuance of the rules, orders, or regulations of the said commissioners, and conformable thereto, nor any contract or agreement, or appointment of any officer, made or entered into in pursuance of such rules, orders, or regulations, and conformable thereto, nor any other instrument made in pursuance of this act, nor the appointment of any paid officer engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor-rate, shall be charged or chargeable with any stamp duty whatever. Power to call for and publish accounts of trust and charity estates.

87. And whereas by an act passed in the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," the visitor and guardian of the poor of any parish, township, or place, which shall adopt the provisions of the said recited act, are authorized thereby to borrow money at interest for the purposes mentioned in the said act, and to secure Advertisements, &c. not liable to stamp duty.

Bonds and securities made pursuant to 22 G. 3, c. 83, and assignments thereof, exempted from stamp duty.

4 & 5 W. 4, c. 76.

such money by a charge upon the poor's rates of such parish, township, or place, in sums not exceeding fifty pounds each, in a certain form contained in the schedule to the said act, or to that or to the like effect, and which security is directed and allowed to be assigned by indorsement on the back thereof in a certain form also contained in the said schedule, or to that or the like effect: and whereas doubts have arisen touching the liability of such securities as aforesaid, and the assignments or transfers thereof to stamp duty, and it is expedient to remove the same; be it therefore enacted and declared, that no bond or other security at any time heretofore or to be at any time hereafter made or entered into in pursuance of the said recited act, nor any assignment or transfer thereof, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to any stamp duty whatsoever; any thing in any act contained to the contrary thereof notwithstanding.

Letters to and from board of commissioners to be free of postage, if sent conformable hereto.

88. And be it further enacted, that the said commissioners shall and may receive and send by the general post from and to places within the United Kingdom, all letters and packets relating solely and exclusively to the execution of this act free from the duty of postage, provided that such letters and packets as shall be sent to the said commissioners be directed to the "Poor Law Commissioners" at their office in London, and that all such letters and packets as shall be sent by the said commissioners shall be in covers, with the words "Office of Poor Law Commissioners, pursuant to Act of Parliament passed in the fifth year of the reign of his majesty King William the Fourth," printed on the same, and be signed on the outside thereof, under such words, with the name of such person as the said commissioners, with the consent of the Lords Commissioners of the Treasury, or any three or more of them, shall authorize and appoint, in his own handwriting, (such name to be from time to time transmitted to the secretaries of the General Post-office in London and Dublin,) and be sealed with the seal of the said commissioners, and under such other regulations and restrictions as the said Lords Commissioners, or any three or more of them, shall think proper and direct: and the person so to be authorized is hereby strictly forbidden so to subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate solely and exclusively to the execution of this act; and if the person so to be authorized, or any other person, shall send or cause or permit to be sent under any such cover, any letter, paper, or writing, or any enclosure, other than what shall relate to the execution of this act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of the said penalty to the use of his majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same, to be sued for and recovered in any of his Majesty's courts of record at Westminster for offences committed in England, and in any of his Majesty's courts of record in Dublin for offences committed in Ireland, and before the sheriff or stewartry court of the shire or stewartry within which the party offending shall reside, or the offence shall be committed, for offences committed in Scotland; and if any letter, paper, or writing, or other enclosure, shall be sent under cover to the said commissioners, the same not relating solely and exclusively to the execution of this act, they are hereby strictly required and enjoined to transmit the same forthwith to the secretary of the Post-office in London, with the covers under which the same shall be sent, in order that the contents thereof may be charged with the full rates of postage.

Letters sent under cover not relating solely to the business of the act to be transmitted to post office to be charged.

Payments contrary to this act to be disallowed.

89. And be it further enacted, that all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this act, or at variance with any rule, order, or regulation of the said commissioners made under the authority of this act, shall be and the same are hereby declared to be illegal, any law, custom, or usage to the contrary notwithstanding; and every justice of the peace is hereby required to disallow as illegal and unfounded all payments, charges, or allowances contrary to the provisions of this act, or to any such rule, order, or regulation of the said commissioners, which shall be contained in any account of any overseer of the poor or guardian which shall be presented for the purpose of being passed or allowed: provided always, that no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules, orders, and regulations of the said commissioners, or to the provisions of this act.

Service of summons.

90. And be it further enacted, that the leaving of any summons authorized to be issued by any commissioner, assistant commissioner, or justice of the peace, under this act, at the usual or last known place of abode of the party to whom such sum

mons shall be directed, shall in every case be deemed good and sufficient service of such summons. 4 & 5 W. 4, c. 76.

91. And be it further enacted, that so much of an act made and passed in the sixth year of the reign of his late majesty king George the Fourth, intituled "An Act to repeal the Duties payable in respect of the Spirits distilled in England, and of Licenses for distilling, rectifying, or compounding such Spirits, and for the Sale of Spirits, and to impose other Duties in lieu thereof, and to provide other Regulations for the Collection of the said Duties, and for the Sale of Spirits, and for the warehousing of such Spirits without Payment of Duty for Exportation," as provides that if any master or officer of any workhouse shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away, in any such workhouse, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a physician, surgeon, or apothecary, and to be supplied in pursuance of such prescriptions from the shop of some apothecary, every such master or such other officer shall for every such offence forfeit one hundred pounds, and for the second like offence lose his office; and so much of the said last-mentioned act as provides that no person shall carry or bring, or attempt to endeavour to carry or bring, any spirits, except to be used in the way of medicine, into any workhouse, under the pain of being imprisoned for every such offence for any time not exceeding three months; and also so much of the said last-mentioned act as provides that every master and chief officer of every workhouse shall procure one or more copy or copies of the clauses in the said act mentioned to be printed or fairly written and hung up in one of the most public places in the workhouse, and renew the same from time to time, so that it may be always kept fair and legible, on pain of forfeiting the sum of ten pounds for every wilful default; or as enables any justice of the peace to demand a sight of such copy so hung up in some public place, to convict such master or officer of such default; shall be and the same is hereby repealed.

Repeal of so much of 6 G. 4, c. 80, as relates to prohibition of spirituous liquors in workhouses.

92. And be it further enacted, that if any person shall carry, bring, or introduce, or attempt or endeavour to carry, bring, or introduce, into any workhouse now or hereafter to be established, any spirituous or fermented liquors, without the order in writing of the master of such workhouse, it shall be lawful for the master of such workhouse, or any officer of the same acting under his direction, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace, who is hereby empowered to hear and determine such offence in a summary way; and upon conviction thereof the party so offending shall forfeit and pay any sum of money not exceeding ten pounds for every such offence, as such justice may direct; and in default of payment of the penalty hereby imposed such justice may and is hereby required to commit such offender to the common gaol or house of correction for the district in which such workhouse shall be situate, for any space of time not exceeding two calendar months, unless such penalty shall be sooner paid.

Penalty on persons introducing spirituous liquors into workhouses.

93. And be it further enacted, that if any master of a workhouse shall order any spirituous or fermented liquor to be carried, brought, or introduced into any workhouse, except for the domestic use of himself or of any officer of the said workhouse, or their respective families, or except by and under the written authority of the surgeon of such workhouse, or of any justice visiting the same, or of the guardians of such workhouse, or in conformity with any rules, orders, or regulations of the said commissioners; or if any such master or any other officer of any workhouse shall carry, bring, or introduce into such workhouse, or sell, use, lend, or give away therein, or knowingly permit or suffer to be carried, brought, or introduced, or sold, used, lent, or given away therein, any spirituous or fermented liquor, contrary to the rules, orders, and regulations of the said commissioners; or shall punish with any corporal punishment any adult person in such workhouse, or confine any such person for any offence or misbehaviour for any longer space of time than twenty-four hours, or such further space of time as may be necessary in order to have such person carried before a justice of the peace; or shall in any way abuse or ill-treat, or be guilty of any other misbehaviour, or otherwise misconduct himself towards or with respect to any poor person in such workhouse; every such master or officer of a workhouse so offending shall for every such offence, upon the complaint of the overseers or guardians of the parish or union to which such workhouse shall belong, or of any such poor person, and upon conviction of such offence before any two justices, forfeit and pay such sum of money, not being more than twenty pounds, as such justices may direct; and in default of payment of the penalty hereby imposed, such justices may and are hereby required to commit such offender to the common gaol or house of correction for the district in

Penalty on masters of workhouses allowing use of spirituous liquors, or ill-treating poor persons, or misconducting himself.

4 & 5 W. 4, c. 76.

Power for justices to order salaries, &c. to be stopped, and applied towards payment of penalties.

* sic.

Masters to hang up copies of two preceding clauses in workhouse.

Penalties on overseers and other officers disobeying guardians.

No overseer to be prosecuted for not executing illegal orders of justices.

Penalty on overseers, &c. purloining, &c. goods, &c. 20l. and treble the value of goods purloined.

Penalty on persons wilfully disobeying rules, orders, and regulations.

Forfeitures, costs, and charges may be levied by distress and sale.

which such parish shall be situate for any space of time not exceeding six calendar months, unless such penalty shall be sooner paid: provided always, that if at the time when any such master or officer of a workhouse shall be so convicted of any such offence, there shall be due to him any sum of money or salary in respect of his employment as such master or officer of such workhouse, or upon any balance of account from the overseers or guardians of the parish or union to which such workhouse shall belong, it shall be lawful for such justices, upon the application of such overseers or guardians, by order in writing under their hand, to direct that such* of money, salary, or balance, so far as the same shall extend, or a sufficient part thereof, shall be retained and applied for the use of such parish or union by such overseer or guardians, in payment or part payment of any such penalty, and such order shall be a good and valid discharge to such overseers or guardians for so much money as may by such order be directed to be so retained and applied against the claim or demand of the master or other officer of such workhouse in respect of any such sum of money, salary, or balance.

94. And be it further enacted, that the master of every workhouse shall cause one or more copy or copies of the two preceding clauses to be printed or fairly written, and hung up in one of the most public places in such workhouse, and renew the same from time to time, so that it always be kept fair and legible, on pain of forfeiting the sum of ten pounds for every wilful default.

95. And be it further enacted, that in case any overseer, assistant overseer, master of a workhouse, or other officer of any parish or union, shall wilfully disobey the legal and reasonable order of such justices and guardians in carrying the rules, orders, and regulations of the said commissioners or assistant commissioners, or the provisions of this act, into execution, every such offender shall, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding five pounds.

96. Provided always, and be it further enacted, that no overseer shall from henceforth be liable to any prosecution or penalty for not carrying into execution any illegal order of such justices or guardians, any law or statute to the contrary notwithstanding.

97. And be it further enacted, that if any overseer, assistant overseer, master of a workhouse, or other paid officer, or any other person employed by or under the authority of the said guardians, shall purloin, embezzle, or wilfully waste or misapply any of the monies, goods, or chattels belonging to any parish or union, every such offender shall, besides and in addition to such pains and penalties as such person so offending shall, independently of this act, be liable to, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and every person so convicted shall be for ever thereafter incapable of serving any office under the provisions of this or any other act in relation to the relief of the poor.

98. And be it further enacted, that in case any person shall wilfully neglect or disobey any of the rules, orders, or regulations of the said commissioners or assistant commissioners, or be guilty of any contempt of the said commissioners sitting as a board, such person shall, upon conviction before any two justices, forfeit and pay for the first offence any sum not exceeding five pounds, for the second offence any sum not exceeding twenty pounds nor less than five pounds, and in the event of such person being convicted a third time, such third and every subsequent offence shall be deemed a misdemeanor, and such offender shall be liable to be indicted for the same offence, and shall on conviction pay such fine, not being less than twenty pounds, and suffer such imprisonment, with or without hard labour, as may be awarded against him by the court, by or before which he shall be tried and convicted.

99. And be it further enacted, that all penalties and forfeitures by this act inflicted or authorized to be imposed for any offence against the same, shall, upon proof and conviction of the offences respectively before any two justices, either by the confession of the party offending, or by the oath of any credible witness or witnesses, (which oath such justices are in every case hereby fully authorized to administer,) or upon order made as aforesaid, be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant under the hands of the justices before whom the party may have been convicted, or, on proof of such conviction, by a warrant under the hands of any two justices acting for the county, riding, or division (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties and forfeitures, and the charges of such distress and sale, are de-

ducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices as aforesaid, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justices as aforesaid are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices as aforesaid, as the case may be, and they are hereby authorized and required, by warrant or warrants under their hands, to cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such penalties and forfeitures, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the penalties and forfeitures, when so levied, shall be paid to or for the use of the parish or union where such offence shall have been committed, to be applied in aid of the poor rate of such parish or union.

4 & 5 W. 4, c. 76.

In what manner to be applied.

100. And be it further enacted, that no owner of property, ratepayer, or inhabitant of any parish or union shall be deemed an incompetent witness in any proceeding for the recovery of any penalty or forfeiture inflicted or imposed for any offence against this act, notwithstanding such penalty or forfeiture, when recovered, shall be applicable in aid of the poor rate of such parish or union.

Owners, ratepayers, &c. may be competent witnesses.

101. And be it further enacted, that in all cases in which any penalty or forfeiture is recoverable before the justices of the peace under this act it shall and may be lawful for any commissioner or assistant commissioner, or any justice, to whom complaint in writing shall be made of any such offence, to summon the party complained against to appear before any two justices, and on such summons the said two justices may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same.

Justices may proceed by summons for the recovery of penalties.

102. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this act the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall afterwards happen in making the distress, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case: provided always, that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made, by or on behalf of the party who shall have committed or caused to be committed any such irregularity, trespass, or wrongful proceedings, before such action shall have been brought; and in case no such tender shall have been made it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings, or orders and judgment, shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Satisfaction recoverable for special damage, but distress not unlawful for want of form in the proceedings.

Plaintiff not to recover for irregularity, if tender of amends be made.

103. Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any order or conviction of any justice or justices, where such person or persons shall be convicted in any penalty or penalties exceeding five pounds, or if any person shall find himself aggrieved by any order made under the provisions of this act on such person as the putative father of any bastard child, it shall be lawful for such person or persons to appeal to any general or quarter sessions of the peace to be held in and for the county, riding, or division in which such order shall have been made or conviction taken place within four calendar months next after the cause of complaint shall have arisen, or if such session shall be held before the expiration of one calendar month next after such cause of complaint, then such appeal shall be made to the next following sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet; which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to

Appeal to the quarter sessions against order of justices within four calendar months after cause of complaint, &c.

Fourteen days notice in writing

4 & 5 W.4, c. 76.

to be given, &c.
and recognizance
to be entered into.

Limitation of
actions.

Defendant may
plead the general
issue.

Costs.

Rules, &c. to be
removable by cer-
tiorari to Court of
King's Bench.

Rules, &c. so re-
moved to continue
in force until de-
clared illegal.

Notice to be
given to commis-
sioners of applica-
tion for writ of
certiorari, &c.

Commissioners
may show cause.

Recognizances to
be entered into.

If rule be declared
legal, commis-
sioners to be en-
titled to costs.

be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the respondent or respondents, and within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen; and to abide the order of and pay such costs as shall be awarded by the justices, at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

104. And be it further enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, or any other person, for anything done in pursuance of or under the authority of this act, until twenty-one days' notice has been given thereof in writing to the party or person against whom such action is intended to be brought, nor after sufficient satisfaction or tender thereof shall have been made to the party aggrieved, nor after three calendar months next after the act committed for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant in such action or suit may plead the general issue, and give this act and any special matter in evidence, at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if, upon any demurrer in such action, judgment shall be given for the defendant therein, then and in any of the cases aforesaid, such defendant shall have costs, charges and expenses, as between attorney and client, and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by law.

105. And be it further enacted, that no rule, order, or regulation of the said commissioners or assistant commissioners, or any of them, shall be removed or removable by writ of certiorari into any court of record, except his Majesty's Court of King's Bench at Westminster; and that every rule, order, or regulation which shall be removed by writ of certiorari into the said Court of King's Bench, shall, nevertheless, unless and until the same shall be declared illegal by that court, continue in full force and virtue, and be obeyed, performed, and enforced, in such and the same manner, and by such and the same ways and means, as if the same had not been so removed.

106. And be it further enacted, that no application shall be made for any writ of certiorari for the removal of any such rule, order, or regulation, except to the judges when sitting in the said court, nor unless notice in writing shall have been left at the office of the said commissioners at least ten days previous to such application being made, and in which notice shall be set forth the name and description of the party by or on behalf of whom and the day on which it is intended to make such application, together with a statement of the grounds thereof; and thereupon it shall be lawful for the said commissioners to show cause in the first instance against such application, and the court may, if it shall so think fit, forthwith proceed to hear and determine the same upon the grounds set forth in such notice.

107. And be it further enacted, that previous to any writ of certiorari being issued, the party or parties applying for the same shall enter into a recognizance, with sufficient sureties, before one of his Majesty's justices of the Court of King's Bench, or before a justice of the peace of the county or place in which such person shall reside, in the sum of fifty pounds, with condition to prosecute the same, at his or their costs and charges, with effect, without any wilful or affected delay, and in default thereof, or in the event of such rule, order, or regulation being deemed legal, to pay the said commissioners their full costs, charges, and expenses, to be taxed according to the course of the said Court of King's Bench; and if the said rule, order, or regulation, so removed by the said writ of certiorari into the said Court of King's Bench, shall be declared legal by the said court, the commissioners entitled to such costs, within ten days after demand made of the person or persons

who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, may recover the same in the same manner as any penalties and forfeitures are recoverable under this act. 4 & 5 W. 4, c. 76.

108. And be it further enacted, that if upon the hearing of the application the court shall order a writ of certiorari to issue for bringing up any such rule, order, or regulation, and the same, being brought into court, shall be quashed as illegal, the said commissioners shall forthwith notify the judgment of the court to all unions, parishes, or places to which such rule, order, or regulation shall have been directed, and the same shall from the time of receiving such notice respectively be deemed and taken to be null and void to all intents and purposes whatsoever: provided, that such judgment shall not have the effect of annulling any contracts made in pursuance or upon the authority of any such rule, order, or regulation, which at the receipt of such notice respectively shall have been executed by either of the contracting parties: provided also, that no person shall be liable to be prosecuted, either by indictment or by civil action, for or in respect of any act done by him before the receipt of such notice, under the authority and in pursuance of such rule, order, or regulation.

If rules are quashed, the same to be notified to parishes to which such rules have been directed.

Proviso for existing contracts.

No person to be answerable until receipt of notice.

109. And be it further enacted, that in the construction of this act the word "auditor" shall be construed to mean and include every person, other than justices of the peace acting in virtue of their office, appointed or empowered to audit, control, examine, allow, or disallow the accounts of any guardian, overseer, or vestrymen relating to the receipt or expenditure of the poor rate; the words "general rule" shall be construed to mean any rule relating to the management of the poor or to the execution of this act which shall at the time of issuing the same be addressed by the said commissioners to more than one union, or to more parishes or places than one not forming a union, or not to be formed into or added to a union under or by virtue of such rule; the word "guardian" shall be construed to mean and include any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor rate, under any general or local act of parliament; the words "justice or justices of the peace" shall be construed to include justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act; the word "oath" shall be construed to include the affirmation of a Quaker, Separatist, or Moravian; the words "orders and regulations" shall be construed to mean and include any rule, order, regulation, or bye-law relating to the management or relief of the poor, or the execution of this act, which at the time of issuing the same shall be addressed, directed, or applied to any one parish or union, or to any number of parishes which have been or by virtue of any order shall be constituted a union or added to a union; the word "officer" shall be construed to extend to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions; the word "overseer" shall be construed to mean and include overseers of the poor, churchwardens, so far as they are authorized or required by law to act in the management or relief of the poor, or in the collection or distribution of the poor rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this act or the laws for the relief of the poor into execution; the word "owner" shall be construed to include any person for the time being in the actual occupation of any property rateable to the relief of the poor, and not let to him at rack rent, or any person receiving the rack rent of any such property, either on his own account or as mortgagee or other incumbrancer in possession; and the words "rack rent" shall be construed to mean any rent which shall not be less than two-thirds of the full improved net annual value of any property; the word "parish" shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place, or division or district of a place, maintaining its own poor, whether parochial or extra-parochial; the word "person" shall be construed to include any body politic, corporate, or collegiate, aggregate or sole, as well as any individual; the word "poor" shall be construed to include any pauper or poor or indigent person applying for or receiving relief from the poor rate in England or Wales, or chargeable thereto; the words "poor law," or "laws for the relief of the poor," shall be construed to include every act

Interpretation clause.

4 & 5 W. 4, c. 76.

22 G. 3, c. 83.

Act may be
amended this
session.

5 & 6 W. 4, c. 69.

Powers for corpo-
rations and per-
sons under dis-
ability to convey
lands, &c. for the
purposes of this
act.

of parliament for the time being in force for the relief or management of the poor, or relating to the execution of the same, or the administration of such relief; the words "poor rate" shall be construed to include any rate, rate in aid, mulct, cess, assessment, collection, levy, ley, subscription, or contribution raised, assessed, imposed, levied, collected, or disbursed for the relief of the poor in any parish or union; that the words "general quarter sessions" shall extend to and be construed to include general or quarter sessions, or adjournment thereof, for any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act; the word "union" shall be construed to include any number of parishes united for any purpose whatever under the provisions of this act, or incorporated under the said act made and passed in the twenty-second year of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or incorporated for the relief or maintenance of the poor under any local act; the words "united workhouse" shall be construed to mean and include any workhouse of a union; the word "vestry" shall be construed to mean any open, customary, or select vestry, or any meeting of inhabitants convened by any notice such as would have been required for the assembling of a meeting in vestry, at which meeting any business relating to the poor or the poor rate shall be transacted or taken into consideration, so far as such business is concerned; the word "workhouse" shall be construed to include any house in which the poor of any parish or union shall be lodged and maintained, or any house or building purchased, erected, hired, or used at the expense of the poor rate, by any parish, vestry, guardian, or overseer, for the reception, employment, classification, or relief of any poor person therein at the expense of such parish; and wherever in this act, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

110. And be it further enacted, that this act may be altered, amended or repealed in this present session of parliament.

5 & 6 WILL. IV. CAP. 69.

An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales.
[9th September, 1835.]

WHEREAS there are certain legal difficulties attending the title, purchase, sale, and disposal of property, which, with respect to workhouses and other property belonging to parishes, incorporations, or unions, it is expedient to remove; and it is also expedient to simplify the assurances for the conveyance, exchange, or transfer of such property: be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the commissioners of the King's Majesty's woods, forests, and land revenues, by and with the consent in writing of the lord high treasurer, or the commissioners of his Majesty's treasury, or any three or more of them, and for his Majesty, by any grant signed by the chancellor of the duchy of Lancaster, and for the Duke of Cornwall, by any grant signed by the chancellor of that duchy, to grant, and for the guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the Poor Law Commissioners for England and Wales (to be testified by order under their hands and seal), and for any lay or ecclesiastical corporation aggregate or sole, and for any feoffees or trustees to charitable or other uses, and for any person beneficially seised or entitled in possession as tenant in fee simple, or in fee tail, general or special, or for his own life, or for years determinable on his own life, (such estate for life or years not being subject to any rent,) or for any term of years in gross whereof not less than four hundred shall be unexpired, and subject to no equity of redemption or rent, except a nominal rent, and for any married woman entitled or interested as aforesaid to her separate use, and for the guardian, trustee, husband, or committee of any person so seised or entitled who shall be an infant, married woman (not separately entitled), idiot, lunatic, or under any other disability, to dispose of,

by way of absolute sale, or in exchange for any messuages, lands, or other hereditaments, any lands or buildings for the purpose of the same being used as or converted into a workhouse, or of being used as the site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said poor law commissioners may approve of, with the rights and appurtenances, and to convey the same and the fee simple and inheritance thereof unto the guardians or overseers of any union or parish and their successors, or in such other manner as the said poor law commissioners may direct, and to accept from and give to such guardians or overseers any monies by way of equality of exchange.

5 & 6 W. 4, c. 69.

2. And with regard to the application of money paid for the purchase or on the exchange of hereditaments of persons under disability; be it enacted, that all sums of money which shall be agreed to be paid to any corporation, or to any trustee, guardian, or committee for or on behalf of any infant, ward, lunatic, idiot, married woman, or other person under disability, or to any person whose lands shall be limited in settlement, for the purchase or exchange of hereditaments as aforesaid, shall, in case the same shall exceed the sum of fifty pounds, and there shall be no person capable of giving a sufficient discharge for the same, be paid by the said guardians and overseers into the Bank of England in the name and with the privity of the accountant general of the Court of Exchequer, to be placed in his account to the credit of the party who shall be so interested in the said hereditaments, describing them, subject to the order of the said court of exchequer; which said court, on the petition of or motion on behalf of any corporation or person making claim to any such money, is hereby empowered to order summarily the investment of such money in the purchase of real estates, to be settled to the same uses and upon the same trusts as the lands so sold were previously subject to, or in the public funds, and the distribution of the rents and dividends thereof respectively, according to the respective interests of the claimants thereof, and to make such other order in the premises as to the court shall seem reasonable; and the cashier of the Bank of England who shall receive such money shall give a receipt to the party paying the same, specifying for what the same is received, which receipt shall be to all intents and purposes a sufficient discharge; and upon such receipt being given it shall be lawful for the said poor law commissioners, by order under their hands and seals, to direct that the said hereditaments so purchased by such guardians or overseers shall be appropriated for the purposes of this act; and in case of doubts or questions of title to any money paid into the Bank of England by virtue of this act, or the securities on which the same may be invested, or the dividends or interest thereof, the corporation or person who shall have been in the possession of such hereditaments, interests, or incumbrances at the time of such purchase, and persons claiming under them, shall be deemed and taken to be lawfully entitled to such hereditaments, interests, or incumbrances until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the securities and principal and interest monies shall be applied and disposed of accordingly; and in case of such purchase, payment into the Bank of England, and application to the Court of Exchequer as aforesaid, it shall be lawful for the said court to order the expenses attending such purchase, payment, or application, or any part thereof, to be paid by such guardians or overseers, who shall accordingly pay the same as and when the said court shall direct, and the money so paid shall be a charge on the poor rates of such parish or such union, as the case may be.

Investment of purchase money to the same uses as the estates sold were subject to.

Parties in possession to be deemed entitled.

Court of Exchequer may order payment of expenses.

3. And in order to ensure the due application of the property of parishes and unions, be it enacted, that it shall be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee of any dissolved union at the time of its dissolution, or a majority of such guardians, trustees, or persons, if more than one, with the approbation, and subject to the rules, orders, and regulations of the poor law commissioners, to sell, exchange, let, or otherwise to dispose of any workhouses, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every and any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct; and, in case of a sale, to apply the produce arising therefrom (after deducting the reasonable expenses thereof) towards the purchase or building of any workhouse, or as or in part of the proportion of such parish or union towards the expense of any workhouse erected,

Power to overseers and guardians of the poor to sell, purchase, and dispose of workhouses, &c.

- 5 & 6 W. 4, c. 69. purchased, or provided on behalf of such parish or union, or as a loan to the board of guardians of such union, upon the security of the rates, for the purpose of erecting a workhouse, or in liquidation of any debt contracted by such parish or union or dissolved union, or in such other manner for the permanent advantage of such parish or union or dissolved union as the said poor law commissioners may approve; and in case of an exchange, the hereditaments to be taken in exchange shall be conveyed to the guardians of such parish or union, or the overseers of such parish, upon the same trusts, and the rents and profits thereof shall be applied to the same purposes, as the hereditaments given in exchange were held, and the rents and profits thereof would have been applicable under the provisions of the law or of this act if the same hereditaments had not been exchanged; and it shall be lawful for the said poor law commissioners to direct the mode and proportions on parishes in which any money required for the purchase of any such property shall be raised, paid, and secured, and also to direct the mode in which the persons by whom, and the objects relating to the management of the poor to which, the rents, profits, beneficial occupation, or income of such property shall be applied, assigned, or distributed; and wheresoever the workhouse or workhouses of any parish in any union may have become or shall hereafter become convertible to the common use of such union, it shall be lawful for the said poor law commissioners to direct such an annual sum, in the nature of rent or other compensation, to be paid to such parish out of the common fund of the union, and to vary the amount of such annual sum or compensation from time to time as the said poor law commissioners shall see fit: provided always, that no such sale or exchange or letting of any workhouses, tenements, buildings, or land of any parish shall take place except with the consent of a majority of the rate-payers of such parish, and of the owners of property therein, entitled to vote under and by virtue of the act passed in the fourth and fifth years of the reign of his present majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are published and given, such majority to be ascertained in manner provided by the said act: provided also, that every sale and exchange or lease of any such workhouse, tenements, buildings, land, or other property which may have been made before the passing of this act, with the consent or approbation in writing of the said poor law commissioners, shall be as valid and effectual as if the same had been directed by their order under the authority of this act; and that any monies or rents which have become or shall become payable in respect of any such sale, exchange, or lease, and have not been applied, shall be applied in the same manner as such monies or rents would have been applicable if such sale or exchange or lease had been made under this act.
- 4 & 5 W. 4, c. 76. 4. And be it further enacted, that all the powers and authorities in and by an act passed in the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," given to guardians of the poor for or relating to the inclosing of any part or portion of waste or common land as therein mentioned; and all powers and authorities in and by an act passed in the fifty-ninth year of the same reign, intituled "An Act to amend the Laws for the Relief of the Poor," given to churchwardens and overseers of the poor for taking land or ground into their hands, and for purchasing, hiring, and taking on lease any land; and all the powers and authorities contained in an act passed in the first and second years of the reign of his present Majesty, intituled "An Act to amend an Act of the Fifty-ninth Year of His Majesty King George the Third, for the Relief and Employment of the Poor;" and in a certain other act passed in the first and second years of the reign of his present Majesty, intituled "An Act to enable Churchwardens and Overseers to inclose Land belonging to the Crown for the Benefit of poor Persons residing in the Parish in which such Crown Land shall be situate;" and in a certain other act passed in the second year of the reign of his present Majesty, intituled "An Act to authorize (in Parishes inclosed under any Act of Parliament) the letting of the Poor Allotments in small Portions to industrious Cottagers;" shall in future be exercised (under the control, and subject to the rules, orders, and regulations of the poor law commissioners,) by the overseers of the poor in any parish not under the management of a board of guardians, and by the guardians of the poor of any union or parish formed or established by virtue of any statute or local act; and all the aforesaid powers and authorities relating to the inclosing, purchasing, hiring, or taking any waste, common, or other land, for the purpose or purposes in the said acts mentioned, shall extend and apply to and may be so exercised as aforesaid by the said overseers and
- Power to overseers to take waste or forest lands extended to guardians, &c.
22 G. 3, c. 83.
59 G. 3, c. 12.
- 1 & 2 W. 4, c. 42.
- 1 & 2 W. 4, c. 59.
- 2 & 3 W. 4, c. 42.

guardians for the purpose of being used as the site of a workhouse, or of being occupied with a workhouse, or for any other of the purposes of the said recited act passed in the fourth and fifth years of the reign of his present Majesty. 5 & 6 IV. 4, c. 69.

5. And be it further enacted, that the powers and authorities given by the said act of the fifty-ninth year of King George the Third, and by the said act of the second year of the present reign, to justices of the peace to cause possession of parish houses and lands and portions of land to be delivered to the churchwardens and overseers of the poor, and any other auxiliary powers or provisions in the said acts or other acts contained in relation thereto, shall extend to and shall be exercised by such justices in respect of any houses and lands and portions of land which are or may be vested in or under the management or control of the guardians of the poor of any union or parish, in the same manner as if the name of those officers had been inserted in the said acts instead of the names of the churchwardens and overseers of the poor. Powers given to justices to deliver possession of parish houses, &c. to churchwardens and overseers, extended to property of unions, &c.

6. And, for simplifying the instruments of assurance of property under this act, be it enacted, that every conveyance, exchange, security, or assignment of security, under the authority of this act, may be made according to the forms set forth in the schedule annexed, or in such other forms as the said Poor Law Commissioners shall direct, or as near thereto as the number of parties, the nature of the interests, and the circumstances of the case will admit, and shall, when executed by the conveying parties, be valid and effectual in the law, without livery of seisin being made, or any bargain and sale to vest possession being executed; and that every conveyance, exchange, security, transfer of security, or instrument made under the authority of this act, shall, when signed by the conveying parties thereto, be transmitted to the said Poor Law Commissioners, who shall, if they shall approve thereof, signify such approval by sealing or stamping the same with their seal; and for preserving evidence of such instruments the said Commissioners shall keep a register, properly indexed, in which they shall insert copies or memorials of such deeds or instruments of which they shall so approve, and of such orders of appropriation of property as are herein-before mentioned; and all such copies or memorials, or copies thereof, purporting to be sealed or stamped with the seal of the said Commissioners, shall be received as evidence of the instruments respectively of which they purport to be copies or memorials. Mode of conveyance.

7. And, for the more easy execution of the purposes of this act, and of the laws relating to the poor, be it enacted, that the guardians of the poor of every union already formed or which hereafter shall be formed by virtue of the aforesaid act passed in the fourth and fifth years of the reign of his present Majesty, and of every parish placed under the control of a board of guardians by virtue of the said act, shall respectively from the day of their first meeting as a board become or be deemed to have become, and they and their successors in office shall for ever continue to be, for all the purposes of this act, a corporation, by the name of the Guardians of the Poor of the Union (or of the Parish of) in the County of ; and as such corporation the said guardians are hereby empowered to accept, take, and hold, for the benefit of such union or parish, any buildings, lands, or hereditaments, goods, effects, or other property, and may use a common seal; and they are further empowered by that name to bring actions, to prefer indictments, and to sue and be sued, and to take or resist all other proceedings for or in relation to any such property, or any bonds, contracts, securities, or instruments given or to be given to them in virtue of their office; and in every such action and indictment relating to any such property it shall be sufficient to lay or state the property to be that of the guardians of the union, or of the parish of ; and in case of any addition to or separation of any parishes from any such union, under the authority of the said act passed in the fourth and fifth years of the reign of his present Majesty, the board of guardians for the time being shall (notwithstanding such alteration) have and enjoy the same corporate existence, property, and privileges as the board of guardians of the original union would have had and enjoyed had it remained unaltered. Approval of the poor law commissioners.

8. And be it enacted, that all buildings, lands, or hereditaments, goods, effects, or other property, which, before the passing of this act, may have been conveyed, with the consent or under the directions of the said Poor Law Commissioners, to any persons in trust for and for the use of any union or parishes, shall, without any further act, vest in the guardians thereof as such corporation in the same manner as if the same respectively had been conveyed to or vested in them under the provisions of this act. Guardians incorporated.

9. And in the interpretation of this act, be it enacted, that wherever in this act, in describing any person or party, matter or thing, the word importing the singular Previous sales made with the consent of the commissioners to be valid.

5 & 6 W. 4, c. 69. number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction; and the words and expressions "general rule," "guardian," "justice or justices of the peace," "orders and regulations," "overseers," "owners of property," "parish," "person," "poor," "poor rate," "union," "vestry," and "workhouse," shall bear and be construed to have the same signification as the same words and expressions are declared to have in the said act of the fourth and fifth years of the present reign, for the amendment and better administration of the laws relating to the poor in England and Wales.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Conveyance.

THIS deed, made the day of in the year , by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act*], and under the direction [*or "with the approbation"*] of the Poor Law Commissioners for England and Wales, testified by their seal being hereunto affixed, witnesseth, That A. B. of in consideration of the sum of paid to him [*or "into the Bank of England"*] by C. D. of doth grant and convey [*or "demise or assign," proper words of conveyance to be used,*] all, &c. [*the property to be aptly described*], and all the right, title, and interest of the said A. B. in and to the same and every part thereof, unto and to be holden by the said C. D., his heirs and assigns. In witness whereof the said A. B. and C. D. have hereunto set their hands and seals.

Witness E. F.

A. B. (l. s.)
C. D. (l. s.)

The seal of the
Poor Law



Commissioners.

Approved and registered the
day of



Form of Exchange.

THIS deed, made the day of by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of the act*], and under the direction [*or "with the approbation"*] of the Poor Law Commissioners for England and Wales, testified by their seal being hereunto affixed, witnesseth, that A. B. of doth grant and convey unto C. D. of all [*the property to be aptly described*], in exchange for the hereditaments herein-after conveyed, to the intent that the said hereditaments above conveyed may be held and enjoyed by the said C. D., and the person or persons who for the time being would have been entitled to the hereditaments herein-after conveyed, if this present exchange had not been made, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges, and incumbrances as the same hereditaments herein-after conveyed now are or may or but for this present exchange would have been subject or liable to; And this deed further witnesseth, That, in pursuance of the said act, and under the said direction [*or "approbation"*], the said C. D. doth grant and convey unto the said A. B. all [*the property to be aptly described*], in lieu of and in exchange for the hereditaments firstly herein-before conveyed, to the intent that the hereditaments lastly herein-before conveyed may be held and enjoyed by the said A. B., and the person or persons who for the time being would have been entitled to the hereditaments firstly herein-before conveyed if this present exchange had not been made, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges, and incumbrances as the same hereditaments now or may be, or but for this present exchange would have been subject or liable to.

In witness whereof the said A. B. and C. D. have hereunto set their hands and seals. 5 & 6 W. 4, c. 69.

Witness E. F.

A. B. (L. S.)
C. D. (L. S.)

The seal of the
Poor Law



Commissioners.

Approved and registered the
day of

Form of Security.

THIS deed, made the day of by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act*], and under the direction [*or "with the approbation"*] of the Poor Law Commissioners for England and Wales, (testified by their seal being hereunto affixed,) witnesseth, That A. B., C. D., E. F., and G. H., being the majority of the guardians of the poor for the union, [*or "the parish of"*], in consideration of the sum of to them in hand paid by Y. Z. of for the purpose of purchasing, building, erecting, repairing, fitting up, or furnishing a workhouse for the union [*or "parish"*], and for providing suitable stock and utensils for that purpose, [*or "in consideration of the conveyance or assurance of," &c., as the case may be,*] do hereby charge the poor rates of the parishes of the said union [*or "parish"*] with the payment of the principal sum of pounds, by the instalments following [*naming them*], together with interest on the principal which shall from time to time remain due, after the rate of per centum, to be payable half-yearly to the said Y. Z., his executors, administrators, and assigns.

Witness L. M.

A. B.
C. D.
E. F.
G. H.

The seal of the
Poor Law



Commissioners.

Approved and registered the
day of

Form of Transfer of Security.

THIS deed, made the day of by virtue of the act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act*], and [*if the guardians or overseers of any parish or union are the parties transferring or accepting the security, then add*] under the direction [*or "with the approbation"*] of the Poor Law Commissioners for England and Wales (testified by their seal being hereunto affixed), witnesseth, That Y. Z. of doth transfer the security [*describing it*], with all right and title to the principal money thereby secured, and to all the interest now due or hereafter to be due thereon, unto V. W. of his executors, administrators, and assigns.

Witness E. F.

Y. Z.
V. W.

The seal of the
Poor Law



Commissioners.

Approved and registered the
day of

An Act to regulate Parochial Assessments.

[19th August, 1836.]

All rates to be made on the net annual value of the property.

Proviso.

Rates to be made in a given form.

Nothing herein to prevent owners from compounding for rates.

Power to order new survey and valuation.

Power for surveyors to enter and examine lands &c. for purposes of survey and plans.

WHEREAS it is desirable to establish one uniform mode of rating for the relief of the poor throughout England and Wales, and to lessen the cost of appeal against an unfair rate: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after such period, not being earlier than the twenty-first day of March next after the passing of this Act, as the Poor Law Commissioners shall by any order under their seal of office direct, no rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent: Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.

II. And be it further enacted, that every such rate made after the said period shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the forms given in the schedule to this Act annexed, so far as the same can be ascertained; and the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form; and otherwise the said rate shall be of no force or validity: provided always, that nothing herein contained shall be construed to prevent the owners of tenements from compounding for the rates to be assessed on the same, in such manner as they were by any statute or statutes enabled to do before the passing of this Act, so that the gross estimated rental of the hereditaments compounded for be entered on the rate in the proper column.

III. And be it enacted, that when it shall be made to appear to the poor law commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the churchwardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, and to direct such guardians to appoint a fit person or persons to make and take every such survey, map or plan, and valuation, and to make provision for paying the costs of every such survey, map or plan, and valuation, either by a separate rate or by a charge on the poor rates, as they may see fit; but in case of such charge being made, then provisions shall be made for paying off not less than one fifth of the sum charged on the rates, and such interest as may from time to time be payable in respect of such charge or any part thereof, in each succeeding year, till the whole is repaid.

IV. And be it further enacted, that for the purpose of making every such survey, map or plan, and valuation, it shall be lawful for the person or persons so to be appointed for making the same respectively, together with their and every of their assistants and servants, at all reasonable times, until the same respectively shall be completed, to enter, view, and examine, survey and admeasure, all and every part of the messuages, lands, and other hereditaments aforesaid, and to do or cause to be done any act or thing necessary for making such survey, map or plan, and valuation: provided always, that any map, survey, plan, or valuation made previously to the appointment of such person or persons which shall be tendered to him or them, and which shall be in his or their judgment and to his or their satisfaction a just

and true map or survey, proper for the purposes aforesaid, may be used for such purposes. 6 & 7 W. 4, c. 96.

V. And be it further enacted, that it shall be lawful for any person or persons rated to the relief of the poor of the parish in respect of which any rate shall be made, at all seasonable times, to take copies thereof or extracts therefrom without paying any thing for the same, any thing in any act of parliament to the contrary notwithstanding; and in case the person or persons having the custody of such rate shall refuse to permit, or shall not permit such person or persons so rated as aforesaid to take copies thereof or extracts therefrom, the person or persons so refusing or not permitting such copy or extract to be made shall forfeit and pay any sum not exceeding five pounds, to be recovered in a summary way before any justice of the peace having jurisdiction in the parish or place. Power to take copies or extracts of rates gratis. Penalty for refusal to permit.

VI. And be it enacted, that the justices acting in and for every petty sessions division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days after the same shall have been made cause notice to be given in writing of his, her, or their intention of appealing against such decision, *and of the matter or cause of such appeal (a)*, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever: provided always, that no such objection shall be inquired into by the said justices in special session unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made; provided also, that the said justices in special session shall not be authorized to inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated. Justices acting in petty sessions to hold four special sessions in the year to hear appeals. (a) Seven days notice to be given of objections.

VII. And be it enacted, that the justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted: provided always, that no order of the said justices shall be removed by certiorari or otherwise into any of his Majesty's courts of record at Westminster: provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions: provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal. Proviso. Justices may act with all the powers of justices in quarter sessions.

VIII. And be it enacted, that this Act shall extend only to England and Wales. Act confined to England and Wales.

IX. And be it further enacted, that this Act may be repealed or amended by any act which shall be passed in this session. Act may be repealed this session.

(a) See context, p. 214, note (a). And see notice of appeal, *post*, Appendix of Forms.

SCHEDULE to which this Act refers.

Form of Rate.

An Assessment for the relief of the poor of the parish of Merton in the county of Surrey, and for other purposes chargeable thereon according to law, made this thirtieth day of March in the year of our Lord one thousand eight hundred and thirty-seven, after the rate of sixpence in the pound.

No.	Arrears due, or if excused.	Name of Occupier.	Name of Owner.	Description of Property rated.	Name or situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at 6d. in the Pound.
1	£ s. d. - - -	James Smith	John Green	Land and Buildings.	Whiteacre Farm.	A. R. P. 40 0 0	£ s. d. 60 0 0	£ s. d. 55 0 0	£ s. d. 1 7 6
2	- - -	Ditto	Ditto	House and Garden.	In West Street	0 1 0	30 0 0	25 0 0	0 12 6
3 {	- 7½ } Excused	John Poor -	Ditto	House -	In Brick Lane	- - -	1 10 0	1 5 0	0 0 7½
&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.

Declaration of Overseers and Churchwardens.

We, do declare the several particulars specified in the respective columns of the
above rate to be true and correct, so far as we have been able to ascertain them, to which end we have used our best
endeavours.

Thomas Jones, Overseer.

John Thomas, [Churchwarden, &c. &c.]

6 & 7 WILL. IV. CAP. 107.

6 & 7 W. 4, c. 107.

An Act to extend the Period for the Repayment of Loans made under an Act passed in the Fourth and Fifth Year of his present Majesty, for the Amendment and better Administration of the Laws relating to the Poor in England and Wales. [20th August, 1836.]

WHEREAS by an act passed in the fourth and fifth years of the reign of his present Majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," it is enacted, that when any sum of money shall have been borrowed for certain purposes therein mentioned, the principal sum shall be repaid by annual instalments of not less than one tenth of the sum borrowed, with interest on the same, in any one year: and whereas several loans have been made by the Exchequer Loan Commissioners and by private persons to divers parishes and unions, the amount whereof or of a large part thereof is still due, and it is expedient that authority should be given in certain cases to allow a longer period for the repayment of such money: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that when any money shall have been so borrowed by any parish or union under the direction or with the sanction of the Poor Law Commissioners, it shall be lawful for the Exchequer Loan Commissioners, with the approbation of the Lords Commissioners of his Majesty's Treasury or of any three or more of them, or for any private persons, if they shall see fit, to extend the repayment of the principal sum borrowed under the provisions of the said recited act, and then remaining due, to such a period as calculating from the date of the charge on the poor rates of such parish or union would extend the repayment thereof to a period not exceeding twenty years instead of ten years, as provided for by the said recited act; and in every future advance it shall be lawful for the Exchequer Loan Commissioners, with the approbation of the Lords Commissioners of his Majesty's Treasury or of any three or more of them, and also for any private persons, if they shall see fit, to extend the repayment of any principal sum so to be borrowed to a period not exceeding twenty years as aforesaid: provided always, that not less than one twentieth part of such principal sum and the interest due in each year upon the whole sum remaining due shall be paid off in every year.

4 & 5 Will. 4, c. 76.

Period for repayment of loans already made may be extended to 20 years instead of 10 years;

and in future advances the repayment may be extended to 20 years.

2. And be it further declared and enacted, that any loans which have or shall in future be made by the said Exchequer Loan Commissioners or by any private persons under the said recited act, and the period of repayment of which shall be extended under the provisions of this act, such extension shall be without prejudice to any security or securities taken or which may in future be taken for such sums or advances respectively, and such loans shall by virtue of such extension be repayable at the extended periods in such and the like manner as if such extended periods of repayment had been inserted in such security or securities respectively instead of the periods provided by the said recited act and set forth in such security or securities respectively.

Extension of repayment of loans not to prejudice the securities.

3 & 4 WILL. IV. CAP. 40.

3 & 4 W. 4, c. 40.

An Act to repeal certain Acts relating to the Removal of Poor Persons born in Scotland and Ireland, and chargeable to Parishes in England, and to make other Provisions in lieu thereof, until the First Day of May, one thousand eight hundred and thirty-six, and to the End of the then next Session of Parliament. [14th August, 1833.]

WHEREAS it is expedient to amend the laws relative to the removal of poor persons born in Scotland and Ireland, the Isles of Man and Scilly, and chargeable to parishes in England, and to make other provisions in lieu thereof: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of January, one thousand eight hundred and thirty-four, so much of an act passed in the seventeenth year of the reign of King George the Second, intituled "An Act to amend and make more effectual the Laws relating to Rogues and Vagabonds, and other Idle and Disorderly Persons, and to Houses of Correction," as relates to passing

So much of 17 G. 2, c. 5, 59 G. 3, c. 12, and 5 G. 4, c. 83, as relates to the removal of poor

3 & 4 W. 4, c. 40.

persons born in Scotland and Ireland, repealed.

Justices at sessions may order removal, by sea or land, of chargeable poor born in Scotland or Ireland, &c. at expense of complaining parish.

Expense to be repaid by county, &c. in which complaining parish is situate.

Justices at sessions to direct how parties shall be removed.

Justices at quarter sessions to make rules, &c. for carrying this act into execution.

Churchwardens, &c. to be repaid

vagrants in Scotland and Ireland, and the Isles of Man and Scilly; and also so much of an act passed in the fifty-ninth year of the reign of King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor," as relates to the removal of poor persons born in Scotland and Ireland who have become chargeable to parishes in England; and also so much of an act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the Punishment of Idle and Disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England," as relates to the removal of poor persons born in Scotland and Ireland, and being chargeable to parishes in England, shall be and the same are hereby repealed.

2. And be it further enacted, that from and after the said first day of January, one thousand eight hundred and thirty-four, it shall be lawful for two justices of the peace, and they are hereby authorized and required, upon the complaint of the churchwardens and overseers of the poor of any parish, township, or other place maintaining its own poor, that any person born in Scotland or Ireland, or in the Isle of Man or Scilly, hath become chargeable to such parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person and any other witness or witnesses on oath touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called England; and if it shall be found by such justices that the person so brought before them was born in either Scotland or Ireland, or the Isle of Man or Scilly, and hath not gained any settlement in England, and that he or she hath actually become chargeable to the complaining parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, then such justices shall, and they are hereby empowered, by an order of removal under their hands and seals, in the form in the Schedule hereunto annexed, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed, by sea or land, in such manner as may have been directed by the justices at quarter sessions assembled in and for the county, city, borough, town corporate, division, or liberty in which the said parish, township, or other place maintaining its own poor may be situate, by and at the charge and expense of the complaining parish, to Scotland or Ireland, or the Isle of Man or Scilly respectively, according as such poor person, or his or her family, shall belong to Scotland, Ireland, or the Isle of Man or Scilly, the charge and expense whereof shall be repaid, in manner hereinafter mentioned, to such complaining parish, township, or other place maintaining its own poor, out of the county rate raised and levied in the county, city, borough, town corporate, division, or liberty in which such parish shall be situate.

3. And be it further enacted, that the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty are hereby authorized and required, at the general or quarter sessions of the peace holden in and for such county, riding, city, borough, town corporate, division, or liberty next after the passing of this act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to direct in what manner, and whether by sea or land, or part of the way by land and part by sea, such poor person, his wife and child or children, removable under the provisions of this act by the churchwardens and overseers of any parish, township, or place maintaining its own poor within such county, riding, city, borough, town corporate, division, or liberty, shall be removed.

4. And be it further enacted, that the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty shall and may and they are hereby required, at the general or quarter sessions of the peace to be holden in and for such county, riding, city, borough, town corporate, division, or liberty next after the passing of this act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to make such orders, rules, regulations, and directions for the more effectually carrying the provisions of this act into execution as they in their discretion shall think proper; which orders, rules, regulations, and directions shall from time to time be observed and submitted to by all justices of the peace, overseers, churchwardens, constables, and other persons concerned in or charged with the removal of such poor person, his wife, child or children as aforesaid, within such county, riding, city, borough, town corporate, division, or liberty.

5. And be it further enacted, that in case the churchwardens and overseers of the parish, township, or place maintaining its own poor, on whose complaint such

order of removal shall be made as aforesaid, shall bring or send to the clerk of the peace or town clerk of the county, riding, city, borough, town corporate, division, or liberty in which such parish, township, or place maintaining its own poor shall be situate, such order of removal, accompanied with an affidavit sworn before some justice of the peace of such county, riding, city, borough, town corporate, division, or liberty, (who is hereby authorized to administer the same,) of the amount of the expenses *bonâ fide* incurred and paid by such churchwardens and overseers on account of the removal of such poor person, his wife, child or children as aforesaid, and also a statement of the several items comprised in such amount, such clerk of the peace or town clerk is hereby required to lay the same before the justices of the peace assembled at the quarter sessions, or adjournment thereof, held in and for such county, riding, city, borough, town corporate, division, or liberty, next after he shall have received the same; and the said justices so assembled as aforesaid are hereby authorized and required to order the amount thereof to be paid out of the county rate raised and levied in such county, riding, city, borough, town corporate, division, or liberty: provided, that on the removal of such poor person, his wife, child or children as aforesaid, the orders, rules, regulations, and directions of the said justices, made as herein-before mentioned, have been duly complied with.

3 & 4 W. 4, c. 40.

expenses out of county rate.

6. And be it further enacted, that all such charges and expenses as aforesaid, which shall be properly and reasonably made for the purposes aforesaid out of any such parish rates within the city of London, shall by such parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, be charged against the said city of London, and being audited and allowed by the justices of the said city of London assembled at any quarter sessions or adjourned sessions of the peace in or for the said city of London, shall thereupon by the chamberlain of the said city of London be repaid to the overseers or guardians of the poor of the said parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, for the benefit thereof; for which purpose a rate or assessment shall be made by the order and under the authority of such justices of the said city of London, in the several wards of the said city of London, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the said parishes and extra-parochial places; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act.

How expenses to be defrayed of removing poor persons within London.

7. And be it further enacted, that in any city, borough, town corporate, division, or liberty which does not contribute to the county rate, or in which no county rate shall be made, raised, or levied, the charges and expenses paid for the purposes aforesaid by the parish or parishes within such city, borough, town corporate, division, or liberty as aforesaid shall be allowed by the justices of the peace for such city, borough, town corporate, division, or liberty as aforesaid, at any quarter sessions or adjourned sessions of the peace, and paid by the order of such justices to the churchwardens or overseers of the poor of the parish or parishes within such city, borough, town corporate, division, or liberty, for which purposes a general rate or assessment shall be made by the order and under the authority of such justices in the parish or parishes, if more than one, within such city, borough, town corporate, division, or liberty, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the parish or parishes of such city, borough, town corporate, division, or liberty; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act for the making, raising, levying, and collecting the said rate.

How expenses to be defrayed when parish is situate in any city, &c. not contributing to county rate.

8. And be it further enacted, that this act shall continue in force until the first day of May, one thousand eight hundred and thirty-six, and to the end of the then next session of parliament.

Term of act.

SCHEDULE.

Form of Order of Removal.

To the constable of the parish of
in the county of

WHEREAS complaint hath been made by the churchwardens and overseers to wit, } of the poor of the ["parish, township," *et cetera*, as the case may be,] in the said county of } unto us, whose names are hereunto set and seals affixed,

3 & 4 W. 4, c. 40. two of his Majesty's justices of the peace acting in and for the said county (one being of the quorum), that a person born in Scotland, [or "Ireland," or "the Isle of Man," or "Scilly,"] hath become and is now actually chargeable to the said ["parish, township," *et cetera, as the case may be*]: and whereas upon examination of the said taken upon oath before us (which examination is hereto annexed) it doth appear and we do adjudge, that the said hath not gained a settlement in England, and that he hath a wife named and children, videlicet, neither of which children have gained any settlement in England:

These are therefore to require you the said constable of aforesaid, in the county of aforesaid, to convey the said his wife and family aforesaid, to Scotland, [or "Ireland," or "the Isle of Man," or "Scilly,"] in the manner directed by the justices of the said county of in pursuance of the provisions of a certain act made and passed in the fourth year of the reign of King William the Fourth, intituled [*here set out the title of this act*].

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-

[*Here copy the regulations, et cetera, of the justices at sessions, as applicable to the removal of the party.*]

Form of Examination.

THE examination of taken on oath before us two of his Majesty's justices of the peace acting in and for the ["county, riding, city, borough, town corporate, division," or "liberty"] aforesaid, this day of in the year of our Lord one thousand eight hundred and thirty- who on oath saith, that according to the best of ["his" or "her"] knowledge and belief ["he" or "she"] was born in in that part of the United Kingdom called Scotland, [or "Ireland," or "in the Isle of Man," or "Scilly,"] which ["he" or "she"] left about years ago, and hath done no act whereby to gain a settlement in that part of the United Kingdom called England, and hath actually become and is now chargeable to the [parish] of in the ["county, township," *et cetera, as the same may be,*] of [and that he hath a wife named and children, neither of which children have gained a settlement in England].

Sworn the day and year first {
above written, before us, }

II.—RULES AND DIRECTIONS OF THE POOR LAW COMMISSIONERS.

1. *Orders and Regulations issued by the Poor Law Commissioners for England and Wales, for the Guidance and Government of Boards of Guardians.*
2. *Orders and Regulations for the Government of Workhouses and Poor-houses.*
3. *Circular stating Duties of Parochial Officers.*
4. *Statement of the Duties of Auditors of Unions.*
5. *Specimen of the Form of a Union.*
6. *Form of Bond of a Relieving Officer.*
7. *Form of Bond of Collector of Rates and Sureties.*
8. *Forms relating to Sale of Parish Property.*

1. ORDERS AND REGULATIONS ISSUED BY THE POOR LAW COMMISSIONERS FOR ENGLAND AND WALES, FOR THE GUIDANCE AND GOVERNMENT OF BOARDS OF GUARDIANS.

1. *Orders, &c. for Guidance of Boards of Guardians.*

To all to whom these presents shall come, we the Poor Law Commissioners for England and Wales send greeting.

Preamble.

WHEREAS, in pursuance of the powers given to us in and by an act passed in the fourth and fifth years of the reign of his present Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," We, the Poor Law Commissioners for England and Wales, appointed under the said act, did by an order under our hands and seal, bearing date the _____, order and declare that the parishes and places named in the margin of the said order, which are situate in the count of _____, being the same which are now named in the margin at the foot of this page, should, on the _____ day of _____ be, and thenceforth should remain united for the administration of the laws for the relief of the poor: And further that on the _____ day of _____ and in the manner therein mentioned, the said parishes and places should respectively elect a guardian or guardians for the said Union.

Recites order.

And whereas by the said act it is provided that the Poor Law Commissioners shall prescribe the duties of guardians, and shall also, as and when they shall see fit, direct the guardians of any Union to appoint such paid officers, with such qualifications as the said Commissioners shall think necessary, for superintending or assisting in the administration of the relief and employment of the poor, either within or out of a workhouse, and for the examining and auditing, allowing or disallowing of accounts in such Union, and otherwise carrying the provisions of the said act into execution. And the said Commissioners are thereby empowered to define and specify and direct the execution of the respective duties, and determine the continuance in office or dismissal of such paid officers, and the amount and nature of the security to be given by, and regulate the amount of salaries payable to, such officers respectively, and the time and mode of payment thereof.

Recites the clauses in the Act authorizing the Board of Poor Law Commissioners to direct the appointment of paid officers.

Now know ye that, in pursuance of the said provisions of the said act, We, the said Poor Law Commissioners, do hereby order, direct, and declare, that—

Guardians; Powers of Board.
1. Orders that as soon as the Board of Guardians shall

1. Upon and from and after the said _____, the ordering and directing of all relief to the poor of the several parishes and places comprised in

1. *Orders, &c.
for Guidance of
Boards of
Guardians.*

have been elected, the relief of the poor shall be under their control, &c.

2. No guardian to act except at a meeting of the board, and except, &c.

3. Three guardians concurring to be a quorum.

4. Chairman and vice chairman to be elected.

the Union constituted by the order hereinbefore recited, and the building, hiring, and providing of any workhouse, poorhouse, or other premises for the reception and maintenance of paupers therein, and the altering, improving or enlarging the same, or any other existing workhouse or poorhouse within the said Union, and the regulation and management thereof, and the hiring or purchasing of land for such workhouse or workhouses, or for the employment of paupers therein, shall appertain and belong exclusively to the guardians of the said Union; subject, however, in all cases to the powers of the Poor Law Commissioners for the time being, and such orders, regulations, rules, and directions as are herein contained, or as may hereafter be issued by the said Commissioners, and saving and excepting such powers and authorities as in the aforesaid act are given or reserved to justices of the peace and overseers of the poor.

2. No guardian shall have power to act in virtue of such office, except as a member, and at a meeting of the said board of guardians, and except as hereinafter is provided with reference to summoning extraordinary meetings of the guardians, and except also as in the aforesaid act is excepted.

3. All the powers and authorities hereby or by the said act granted to or vested in such guardians, shall and may from time to time be exercised by the major part of the guardians who shall attend at any meeting to be holden as is herein directed. But no act of any such meeting, except for the purpose of adjourning the same, shall be valid, unless three guardians at least shall be present and concur therein.

4. The guardians shall, at their first meeting, elect out of the whole number of guardians a chairman and a vice-chairman, who shall continue to act as such until the next annual election of guardians shall take place; and at every meeting during the year the chairman, or in his absence the vice-chairman, shall preside; and if at any meeting the chairman and vice-chairman shall be absent, the guardians present shall elect a chairman for that meeting: And when there shall be an equal number of votes upon any question, including the vote of the presiding chairman, he shall have a casting vote.

*Meetings of
Board.*

5. The first meeting to be on the next.

6. At the first meeting the fixed day of weekly meeting to be settled.

7. As to notice.

8. As to adjournment.

Non attendance.

9. Power to adjourn.

10. Extraordinary meetings.

11. As to notices.

MEETINGS OF THE BOARD OF GUARDIANS.

5. The first meeting of the guardians shall be held at on the 183, and shall commence at ten o'clock in the forenoon: at which meeting every guardian is hereby required to attend: but if three guardians be present at such first meeting, the non-attendance of the remainder shall not invalidate the proceedings of such meeting.

6. The guardians shall meet once at the least in every week, at for the execution of their duties, and shall, at their first meeting, determine upon some fixed day of the week, and some fixed hour between eight o'clock in the forenoon and two o'clock in the afternoon, for holding such weekly meetings, and also on some convenient place for holding the same.

7. Notice of the first of the said weekly meetings, and of the place, day, and hour fixed for holding the same, shall be given in manner hereinafter directed; but it shall not be necessary to give notice of any other than the first of such weekly meetings.

8. If three guardians be not present at any weekly or other meeting, the guardian or guardians who shall be present shall adjourn the same to the next day of weekly meeting, or to such other day previous to the next weekly meeting as he or they shall think fit; and thereupon the clerk shall make an entry in the minute-book of the adjournment, and of the cause thereof; and in case no guardian shall attend, the clerk shall make an entry of such failure of attendance; provided that, in either case, one hour and no more shall be allowed to elapse from the time fixed for the commencement of the meeting before any such entry be made as is above directed.

9. The majority of the guardians present at any weekly meeting may, if necessary, adjourn the same to the day of the next weekly meeting, or to such other day previous to the next weekly meeting, as they may think fit.

10. Any two guardians, by a notice in writing, according to the form A, hereto annexed, may direct the clerk to the board of guardians to summon an extraordinary meeting of the board at any time by such notice as hereinafter is mentioned.

11. Notice of the first weekly meeting of the guardians, and notice of adjournment of a weekly or other meeting, and notice of an extraordinary meeting, shall be given in writing according to the forms B. C. and D. hereto annexed, and signed by the clerk to the board of guardians; and two days at least before the day upon which the meeting to which such notice relates is to take place, the clerk to the

board of guardians shall give or cause to be given to each guardian resident within the Union, or cause to be left at his place of abode, a copy of such notice.

12. If any case of emergency shall arise, requiring that a meeting of the guardians shall immediately take place, they or any three of them may meet, and act as if a regular notice had been given; and may take such case into consideration, and give order therein, provided always that such order shall only be valid and have effect until the next weekly meeting of the board of guardians.

1. Orders, &c. for Guidance of Boards of Guardians.

12. Meetings in case of emergency.

PROCEEDINGS OF THE BOARD.

Proceedings of Board.

13. At each weekly meeting of the board of guardians the business shall be conducted in the following order:—

13. Order of proceeding: Minutes of former meetings to be read.

Firstly. They shall read over the minutes of the preceding weekly meeting, and of any extraordinary meeting which shall have been held during the preceding week, and cause an entry of the same having been so read to be made in the minutes.

Secondly. They shall dispose of such business as may have arisen out of the minutes so read, and give the necessary directions thereon.

Business arising out of the same to be first transacted. To consider applications as to relief.

Thirdly. They shall consider and decide upon, and give the necessary directions respecting all applications which shall have been made since the last meeting, and also respecting the amount and nature of relief to be given or continued to the paupers upon the books of the parishes or places in the said Union, or within any of the workhouses thereof, until the next weekly meeting, or during such other time as such relief may be deemed to be necessary.

Fourthly. They shall hear and consider applications of any paupers which may be made at the existing meeting; but no such application shall be heard, unless such paupers shall have previously applied to the relieving officer for the parish from which such paupers claim relief.

To consider applications of paupers.

Fifthly. They shall determine the kind of work to be performed by the paupers either in or out of the workhouse.

Employment of paupers to be fixed. To inspect books and accounts.

Sixthly. They shall examine the books and accounts of the several relieving officers, receive reports on the state of the workhouse or workhouses of the Union, and give all needful directions thereon.

Seventhly. They shall give the necessary directions to the churchwardens and overseers of the several parishes in the Union, for providing such sums as may be requisite for the relief of the poor of such parishes, and for defraying such proportion of the general expenses of the Union as shall be lawfully chargeable on such parishes respectively.

Directions to churchwardens, &c. respecting relief to be given.

Eighthly. The guardians present, or the presiding chairman in their behalf, shall sign the minutes of the proceedings.

To sign the minutes.

APPOINTMENT OF CLERK, TREASURER, AND RELIEVING OFFICERS.

14. Appointment of Clerk, &c.

14. At the first meeting of the guardians, or within one month after the same, the guardians shall appoint a fit and proper person to be clerk to the board of guardians, and a fit and proper person to be treasurer to the said Union, and shall take such security for the proper discharge of the said office of treasurer as shall seem to them necessary and fitting; and shall also appoint such and so many competent person or persons as the said board of guardians shall think fit, to be a relieving officer or relieving officers of the said Union, and shall likewise determine the parishes or places for which each such relieving officer shall act: and in case and so often as any person so appointed shall die, or resign, or be removed, the said board of guardians shall, as soon as conveniently may be after such death, resignation, or removal, proceed in like manner to a new appointment; and the salaries of such clerk, treasurer, or relieving officers, shall be such as the said Poor Law Commissioners shall from time to time direct.

15. If any such clerk or relieving officer shall be at any time prevented by sickness or accident from the performance of his duties, the board of guardians may appoint a competent person to act as his temporary substitute.

15. In case of sickness.

16. If the board of guardians shall, in the event of any vacancy in the office of relieving officer or clerk, delay to make a new appointment, or to appoint a substitute in case of sickness or accident as aforesaid, the duties hereby required to be performed by such relieving officer shall, in the cases aforesaid, and also in the meantime and until the first relieving officer shall be appointed as herein directed, be performed by the overseers of the poor of the several parishes and places in the Union respectively; and the duties of clerk to the board of guardians shall in the like cases be performed by the vice-chairman, or in his absence by some guardian to be appointed by the chairman.

16. When no fresh appointment made; by whom duties to be performed.

1. *Orders, &c.
for Guidance of
Boards of
Guardians.*

17. Relieving officer to reside in one of the parishes for which he acts.

18. *Duties of
Clerk.*

To attend meetings, &c.
To keep accounts, &c.

To conduct correspondence, &c.

To give notices.

To observe all orders, &c.

19. *Duties of Relieving Officers.*

To attend meetings.

To receive applications for relief, &c.

To give temporary relief.

To notify sickness of paupers.

To keep account of monies disbursed by him for poor.

To report cases of relief given by churchwardens.

To enter names of paupers, &c. in a book.

To make out quarterly list.

To observe orders, &c.

17. No person shall be chosen as such relieving officer unless he will undertake to reside in one of the parishes for which he may be appointed to act, and to devote his whole time to the employment, not following any other trade or profession whatsoever, nor unless he can read and write and keep accounts.

DUTIES OF THE CLERK.

18. The following shall be the duties of the clerk:—

Firstly. To attend all meetings of the guardians, and to enter punctually into a book at every meeting the minutes of all the proceedings thereat; which minutes shall be submitted to the presiding chairman of the same for his signature.

Secondly. To keep all such accounts, books of account, minute-books, and other memoranda, as the board of guardians may think necessary, and as the Poor Law Commissioners may require.

Thirdly. To conduct the correspondence of the board of guardians according to their directions; and to make all necessary copies thereof, and preserve the same, and all letters and documents belonging to the Union.

Fourthly. To give such notices of adjourned and other meetings of the guardians as hereinbefore are mentioned.

Fifthly. Generally to observe and fulfil all lawful orders and directions of the board of guardians; and likewise the rules, orders, and regulations already, or to be hereafter, issued by the Poor Law Commissioners.

DUTIES OF THE RELIEVING OFFICERS.

19. The following shall be the duties of each relieving officer:—

Firstly. To attend all weekly meetings of the guardians, and all other meetings when summoned for that purpose.

Secondly. To receive all applications for relief, and to examine into the merits and circumstances of each case, and report the same to the board at their next weekly meeting.

Thirdly. In cases of sudden and urgent necessity, to give such temporary relief as each case shall require, either by placing the pauper in the workhouse or affording relief out of the house, in articles of absolute necessity, but not in money; whether the applicant for relief be settled in any parish or place comprised in the Union or not.

Fourthly. As soon as he shall have had notice of the sickness of, or of any injury received by, any pauper in any of the parishes or places for which he may be appointed to act, he shall notify the fact to the medical officer, and in the meantime furnish such relief as the emergency of the case may call for; and shall also furnish such further relief in or out of the workhouse as the case, upon the certificate of the medical officer, may appear to require.

Fifthly. To keep a separate, full, and true account of all monies received and disbursed by him, for or on account of the relief of the poor of each parish for which he shall be appointed to act, and also of all articles received and given out by him for the relief of the out-door poor, and to balance such account weekly, and present the same for inspection and approval at the meeting of the guardians.

Sixthly. To report to the board of guardians, at their weekly meeting, all cases in which relief shall have been given by the churchwardens or overseers of the poor of any parish or place for which he shall be appointed to act.

Seventhly. To keep a book in which he shall enter the name of, and other particulars relating to the paupers relieved out of the workhouse, and the amount of relief afforded to them respectively; and to produce such book for the inspection of the guardians at every weekly meeting of the board.

Eighthly. Once in every quarter of a year, as soon as conveniently may be after the respective days following, namely, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, he shall make out a list, according to form E, for each of the parishes or places for which he may be appointed to act, of the paupers who have received relief during the previous quarter, and of the relief afforded them in or out of the workhouse, and shall affix copies of such lists respectively, upon the principal doors of the parish churches of the parishes or places for which such lists are made; which copies shall remain so affixed for three successive Sundays.

Ninthly. Generally to observe and fulfil all lawful orders and directions of the board of guardians, and likewise the rules, orders, and regulations already or to be hereafter issued by the Poor Law Commissioners.

DUTIES OF CHURCHWARDENS AND OVERSEERS OF THE POOR.

Firstly. The churchwardens and overseers of the poor of every parish or place in the union shall make, assess, and collect all rates which shall be necessary for the relief of the poor, and for defraying all other charges and expenses which by law now are, or hereafter may be, chargeable on the same; and shall duly and properly satisfy all such charges and expenses; and shall at the end of each quarter, submit to the auditor of the union a distinct account and balance-sheet, exhibiting the amount so collected and the amount so disbursed.

Secondly. They shall, from time to time, pay over from the rates so collected all such sums as by the authority of the board of guardians expressed to them in writing, according to the form K. hereunto annexed, signed by the presiding chairman of any meeting and two other guardians present at the same, and countersigned by the clerk, shall be directed to be provided from the poor-rates of their respective parishes for the necessary relief of the poor thereof, and for defraying such proportion of the general expenses of the union as shall be lawfully chargeable on such parishes respectively; and shall pay over such sums to such person or persons, at such times and places, as by the same authority shall be directed, and shall take such person's receipt for the same; and shall produce such authority and such receipt as their vouchers for those payments before the auditor of the union in passing their quarterly accounts.

Thirdly. They shall provide, at the expense of the parish or place, a *Rate Book*, according to the Form G. hereunto annexed; and shall duly and punctually make the entries therein of the several matters mentioned in the headings of the several columns of the said form: and every rate for the relief of the poor in such parish or place, and the allowance of such rate by the justices, shall be recorded in the said rate book.

Fourthly. If any churchwarden or overseer of the poor of any parish or place in this union shall, in any case of sudden and urgent necessity, deem it right that temporary relief to any pauper in articles of necessity should be given out of the workhouse, such churchwarden or overseer shall, if possible, cause the same to be given by the relieving officer for such parish or place; but if such churchwarden or overseer shall give such relief himself, he shall forthwith report the same in writing to such relieving officer.

Fifthly. If any churchwarden or overseer of the poor of any parish or place in this union shall be ordered, under the 54th section of the Poor Law Amendment Act, to give temporary relief in articles of absolute necessity, but not in money, to any poor person not settled nor usually residing in the parish, and shall give such temporary relief accordingly, he shall forthwith report the same in writing to the relieving officer for such parish or place.

Sixthly. If any churchwarden or overseer of the poor of any parish or place in this union shall receive an order directing relief to be given to any person (duly certified, under the hand and seal of one of the signing justices, to be of his own knowledge wholly unable to work,) without requiring that such person shall reside in any workhouse, he shall forthwith transmit the same to the relieving officer for his parish, to be laid before the board of guardians at their next meeting, that the board of guardians may be enabled without delay to give to the relieving officer the necessary directions as to the amount and nature of the relief to be given.

Seventhly. The churchwardens and overseers of the poor of the several parishes or places in this union are hereby enjoined, in all things where their aid may be necessary or required by the said guardians, or by any relieving officer acting under the directions of the said guardians, to give their aid in carrying the orders of the said guardians into effect, and generally to observe and fulfil all lawful orders and directions of the board of guardians, and likewise the rules, orders, and regulations already, or to be hereafter issued by the Poor Law Commissioners.

RELIEF.

21. Immediately from and after the first meeting of the board of guardians above directed, the guardians of the union, and the churchwardens and overseers of the several parishes and places comprised therein, and the relieving officers for the said union, immediately from and after the time of their appointment, shall, to such extent as in the convenient and proper discharge of their several duties they may

1. Orders, &c.
for Guidance of
Boards of
Guardians.

20. Duties of
Churchwardens
and Overseers.

To make and
collect all rates,
&c.

To pay over the
same, &c.

To provide a rate
book.

To cause the re-
lieving officer to
give temporary
relief in case of
urgent necessity.
If given by him-
self, to report
same.

To transmit orders
from justices to
the relieving
officer.

To assist in carry-
ing into effect
orders of guar-
dians.

21. Relief.

Relief to be
given according
to following rules.

1. *Orders, &c. for Guidance of Boards of Guardians.*

No money to be given to able-bodied, &c.

If employed by parish, one-half of relief to be in kind.

One-half of relief to widows, &c. to be in kind.

No relief to be given on account of rent.

No relief to be given to non-resident paupers, except, &c.

be enabled, observe, and conform to, and carry into effect the following Rules and Regulations, relating to the relief of the poor in the said union; and from and after the day of 183 , the said Rules and Regulations shall become peremptory and binding upon the parties above mentioned, and shall not be departed from in any case, nor shall any relief be thereafter given from the poor rates of any parish or place in the union contrary thereto:—

Firstly. No relief shall be given in money (except in cases of sickness or accident,) to any able-bodied male pauper who is in employment, (the same not being parish work,) and in the receipt of earnings; nor to any part of his family who shall be dependent on him, or for whose relief and maintenance he shall be liable.

Secondly. If any able-bodied male pauper shall apply to be set to work by the parish, one-half at least of the relief which may be afforded to him or to his family shall be in kind.

Thirdly. One-half at least of the relief which may be afforded to widows or single women, not being aged or infirm, shall be in kind.

Fourthly. No relief shall be given to any able-bodied male pauper by payment or payments of, for, or on account of the rent for his house or lodging, or for the house or lodging of any part of his family who shall be dependent upon him, and for whose relief and maintenance he shall be liable, or by allowance towards such rent.

Fifthly. Except in case of accident, sickness, or other urgent necessity, no relief shall be afforded from the poor rates of any parish or place comprised in the said union, to any pauper between the ages of sixteen and sixty, belonging to any such parish or place comprised in the said union, who shall not be resident therein: provided always, that this regulation shall not extend to any person not being an able-bodied male pauper between the ages of sixteen and sixty, who shall, on the day herein appointed for the first meeting of the guardians, be in the receipt of relief from any parish or place comprised in the said union, although not resident in such parish or place, and although such person shall continue a non-resident; but in every such case due inquiry shall be made as to the propriety of such relief being continued.

22. *Medical Relief.*

To contract for medical officer.

23. Medical officer to give certificates when required.

24. To make weekly return.

25. *Relief by way of Loan.*

26. *Purchase of Provisions, &c.*

MEDICAL RELIEF.

22. The guardians shall contract with some competent person or persons duly licensed to practise as a medical man, to be the medical officer or officers of the said union, and to attend duly and punctually upon all sick paupers belonging to and resident within the union, either in the workhouse or otherwise, and to supply such sick paupers with necessary medicines; and such contract shall contain a clause, by which the said medical officer shall engage to attend, at a fair and reasonable charge per head, to be named in such contract, on all persons not belonging to any parish or place comprised in the said union, whom by law any such parish or place may be bound to relieve, whether under suspended orders of removal or otherwise.

23. The medical officer shall, in every case, when required by the guardians, or the relieving officer, or by the pauper on whom he is attending, give a certificate under his hand of the sickness of such pauper, or other cause of the attendance of such medical officer, the extent and nature of such sickness at the time of giving such certificate, and its probable duration, and such other particulars as may show how far the applicant is prevented from attending to his usual calling.

24. The medical officer shall make a weekly return to the board of guardians, according to the Form F. hereunto annexed, and shall also attend the board of guardians when summoned by them.

RELIEF BY WAY OF LOAN.

25. Any relief, or the cost price thereof, which the board of guardians shall, after due consideration of the circumstances of the case, think fit to give by way of loan, to or on account of any able-bodied male pauper, between the ages of twenty-one and sixty; or to or on account of his wife, or any part of his family under the age of sixteen, shall be considered as a loan to such pauper, and shall be recoverable as such under the provisions of the Poor Law Amendment Act.

PURCHASE OF PROVISIONS AND OTHER ARTICLES.

26. The board of guardians shall order and direct the purchasing of the supplies of bread, flour, and meat, and other articles required for use in the workhouse, or for the relief of the paupers out of the workhouse, in such manner as may appear

to such guardians best calculated to prevent imposition and to promote economical management; and that, with such view, such purchases shall, so far as circumstances will allow, be made upon tenders after public advertisement in one country newspaper at least.

1. Orders, &c. for Guidance of Boards of Guardians.

ACCOUNTS.

27. Accounts.

27. The guardians shall, at their first weekly meeting, or within one month of the same, appoint a competent person to be auditor of the accounts, and immediately report such appointment to the poor law commissioners; and such auditor shall, four times in every year, that is to say, within thirty days of each of the following days, namely, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, examine and audit, allow or disallow, the accounts of the said union and of the several parishes comprised therein, according to the laws in force for the time being for the administration of the relief of the poor; and the said auditor, having audited the quarterly account, shall with his own hand write a certificate of such audit at the foot of such account, according to the Form H. hereunto annexed; and such accounts so audited, allowed, and certified, shall be open at all reasonable times to the inspection of the rate payers of the parish or place to which such accounts relate.

Guardians to appoint an auditor, who shall audit the accounts quarterly.

And write certificate of such audit.

28. That such auditor shall receive for the performance of such duty, such sum as the board of guardians, with the consent of the Poor Law Commissioners, shall determine; and the auditor so appointed shall remain in office (unless he shall previously die or resign,) until he be removed therefrom by the said commissioners, or by the said board of guardians, with the consent in writing of the said Commissioners; and in either of such cases another auditor shall be in like manner appointed.

28. As to salary.

Given under our hands and seal, this day of in the year one thousand eight hundred and thirty-

(Signed) T. FRANKLAND LEWIS.
(L. S.) JOHN GEORGE SHAW LEFEVRE.
GEO. NICHOLLS.

FORM A.—Requisition for an Extraordinary Meeting of Guardians.

To the Clerk of the Guardians of the Union.

Sir,

We the undersigned, being two of the guardians of the poor of the union, do hereby require and direct you to summon an Extraordinary Meeting of the Guardians of the said Union, to be holden at on the day of 183 , at o'clock in the forenoon, to take into consideration [set out the motion].

FORM B.—Notice of First Weekly Meeting.

To A. B.

Guardian of the Poor of the Union.

Sir,

You are hereby informed that the first Weekly Meeting of the Board of Guardians of the Union, will take place at on the day of 183 , at o'clock in the forenoon, for the transaction of business; and that meetings of the said board will henceforth be held at the same place, on in every week, at the same hour of in the forenoon.

Clerk to the Board of Guardians of the Union.

FORM C.—Notice of an Adjourned Meeting of Guardians.

Sir,

This is to give you notice that an Adjourned Meeting of the Guardians of the poor of the Union will be held at on the day of 183 , to take into consideration [set out the motion]; which meeting you are hereby requested to attend.

Clerk to the Guardians of the Poor of the Union.

2. Orders, &c.
for Government
of Workhouses
and Poorhouses.

2. ORDERS AND REGULATIONS FOR THE GOVERNMENT OF WORKHOUSES
AND POORHOUSES.

Admission of
Paupers.

ADMISSION OF PAUPERS.

1. Paupers may be received into the workhouse in any one of the following modes, and in no other, viz.—

By an order of the board of guardians signified in writing.

By a provisional order in writing, signed by a relieving officer.

By the master of the workhouse, without any such order, in case of any sudden or urgent necessity.

2. No pauper shall be admitted under any written order as above mentioned, if the same bear date more than six days before the pauper presents it, and claims to be admitted.

3. If a pauper be admitted by the provisional order of a relieving officer, or by the master of a workhouse, in a case of sudden and urgent necessity, the admission of such pauper shall be brought before the board of guardians at their next weekly meeting, who shall decide on the propriety of the pauper's continuing in the workhouse or otherwise, and order accordingly.

4. As soon as a pauper is admitted, he or she shall be placed in some probationary room, and shall there remain until examined by the medical officer of the workhouse.

5. If the medical officer upon such examination pronounces the pauper to be labouring under any disease of body or mind, the pauper shall be placed either in the sick ward or the ward for lunatics and idiots not dangerous, as the medical officer shall direct.

6. If the medical officer pronounces the pauper to be free from disease, the pauper shall be placed in the workhouse assigned to the class to which he or she may belong, and shall thereafter be treated according to the regulations hereinafter contained.

7. Before removal from the probationary ward, the pauper shall be thoroughly cleansed, and if adult, shall be clothed in the workhouse dress; and the clothes which he or she wore upon admission shall be purified, and deposited in a place to be appropriated for that purpose, to be restored to the pauper on leaving the workhouse.

8. The clothing of the paupers shall be made of such materials as the board of guardians shall determine, and shall so far as possible be made by the paupers in the workhouse.

Classification of
Paupers.

CLASSIFICATION OF PAUPERS.

9. The in-door paupers shall be classed as follows, and to each class shall be assigned by the board of guardians that workhouse or poor house which may be best fitted for the reception of such class, and in which they shall respectively remain unless as hereinafter provided.

1. Aged or infirm men.

2. Able-bodied men, and youths above thirteen.

3. Youths and boys above seven years old and under thirteen.

4. Aged or infirm women.

5. Able-bodied women, and girls above sixteen.

6. Girls above seven years of age and under sixteen.

7. Children under seven years of age.

Provided that, if in special cases the board of guardians deem it advisable, that they shall be at liberty to make exceptions to the above classification of the inmates of any of the workhouses, in favour of individuals of the first and fourth classes.

Provided also, that it shall be in the discretion of the guardians to place any boy, between the ages of thirteen and sixteen, in either of the classes 2 or 3.

10. Any paupers may be taken out of their respective classes, and employed as nurses or as assistants to the nurses in any of the sick wards, or in the care of infants, or as superintendents or assistants in the household work for any of the classes, and may be so employed either constantly or occasionally. Provided always, that no pauper of the fifth or sixth class be allowed personal communication with any pauper of the second or third class, except as nurse or as assistant to a nurse.

11. The children of the seventh class shall be placed either in a ward by themselves, or in such of the wards appropriated to the female paupers as the board of guardians shall direct. The mothers of such children to be permitted to have

access to them, at such reasonable times as the guardians shall appoint. With the foregoing exceptions, no pauper of one class shall be allowed to enter the wards or yards appropriated to any other class.

12. The paupers of the several establishments comprised in the parish or union, shall be employed in any work which may be needed, and of which they may be capable, for the use of any or all of the establishments within the union, or in any other way the board of guardians may direct.

DISCIPLINE AND DIET.

2. Orders, &c.
for Government
of Workhouses
and Poorhouses.

Discipline & Diet.

13. All the paupers in the workhouse, except the sick, the aged and infirm, and the young children, shall rise, be set to work, and be kept to work twelve hours each day in summer and eleven hours in winter, including meals, for which two hours in the whole shall be allowed and no more.

14. Half an hour after the bell shall have been rung for rising, the names shall be called over in the several wards provided for the second, third, fifth, and sixth classes, when every pauper belonging to the ward must be present, to answer to his or her name, and to be inspected by the master or matron, except by reason of sickness or tender years.

15. No pauper of the second, third, fifth, or sixth classes, shall be allowed to go or to remain in his or her sleeping-ward, either in the time hereby allotted for work, or in the intervals allowed for meals, except by permission of the master.

16. As regards aged and infirm persons and children, the master and matron of the workhouse shall (subject to the directions of the board of guardians) fix such hours of rising and going to bed, and such occupation and employment as may be suitable to their respective ages and conditions.

17. The boys and girls who are inmates of the workhouse shall for three of the working hours at least, every day, be respectively instructed in reading, writing, and in the principles of the Christian religion, and such other instructions shall be imparted to them as are calculated to train them to habits of usefulness, industry, and virtue.

18. The meals for the aged and infirm, the sick, and children, shall be provided at such times and in such manner as the board of guardians may direct.

19. The diet of the able bodied paupers shall be so regulated as in no case to exceed in quantity and quality of food, the ordinary diet of any class of able-bodied labourers living within the same district.

20. No pauper shall be allowed to have or use any wine, beer, or other spirituous or fermented liquors, unless by the direction in writing of the medical officer, who may also order for any individual pauper such change of diet as he shall deem necessary; and the master shall report such allowance or changes of diet so made to the next meeting of guardians, who may sanction, alter, or disallow the same at their discretion.

21. No pauper shall be allowed to work on his own account whilst an inmate of the workhouse; the union which supports him being entitled to the full produce of his labour.

22. Any pauper may quit the workhouse giving the master three hours' previous notice of his wish to do so; but no able-bodied pauper, having a family, shall so quit the house without taking the whole of such family with him or her, unless the board of guardians shall otherwise direct; nor shall any pauper, after so quitting the house, be again received into the house, unless in one of the modes prescribed in Rule 1. for the admission of paupers.

23. No person shall be allowed to visit any pauper in the workhouse, except by permission of the master, and subject to such conditions and restrictions as the board of guardians may direct; provided that the interview shall always take place in the presence of the master or matron, and in a room separate from the other inmates of the workhouse unless in case of sickness: Provided also, that any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, may visit such workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion—such religious assistance, and such instruction, being strictly confined to inmates who are of the religious persuasion of such licensed minister, and to the children of such inmates.

24. No work, except the household work and cooking, shall be performed by the paupers on Sunday.

25. All the paupers shall attend Divine Service, except the sick and the young children, and such as are too infirm to do so, and except also those paupers who

2. *Orders, &c.
for Government
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may object so to attend, on account of their professing religious principles differing from those of the church of England.

26. Any pauper who shall neglect to observe such of the foregoing rules as are applicable to him or her ;

Or who shall make any noise when silence is ordered ;

Or use obscene or profane language ;

Or by word or deed insult or revile any other pauper in the workhouse ;

Or who shall not duly cleanse his or her person ;

Or neglect or refuse to work ;

Or pretend sickness ;

Or who shall wilfully waste or spoil any provisions, or stock, or tools or materials for work ;

Or wilfully damage any property whatsoever belonging to the parish or union ;

Or disobey any of the legal orders of the master or matron, or other superintendent ;

shall be deemed disorderly, and shall be placed in apartments provided for such offenders, or shall otherwise be distinguished in dress, and placed upon such diet as the board of guardians shall prescribe.

27. Any pauper who shall, within seven days, repeat one of the offences specified in Rule 26. ;

Or commit a second of the offences specified in Rule 26.

Or who shall by word or deed insult or revile the master or matron, or any officer of the parish or union ;

Or who shall be guilty of any act of drunkenness or indecency ;

shall be deemed to be refractory, and shall be punished by such confinement and alteration of diet as the board of guardians shall direct, by any regulation for that purpose ; but no pauper shall be confined under this rule for any misbehaviour or offence for a longer period than twenty-four hours, or for such further space of time as may be necessary, in order to have such pauper carried before a justice of the peace, to be dealt with according to law.

*Visiting Com-
mittee.*

VISITING COMMITTEE.

28. The guardians shall appoint a visiting committee from their own body, whose duty it shall be to examine the workhouse or workhouses of the union once every month at the least, and after a careful inspection, to write such answers as the facts may warrant to the following queries, which are to be printed in a book, entitled the visitor's book, to be kept for that purpose, and submitted regularly to the board of guardians at their weekly meeting.

1. Is the house clean and well ventilated in every part ?—if not, state particulars of every defect or omission.

2. Are the inmates generally healthy, or is there any sickness prevalent among them ?—if so, state particulars, and especially if any dangerous or highly infectious case of illness exists in the house.

3. Are the able-bodied male inmates kept at work as directed by the board of guardians ?—if not, and if any improvement in the mode or description of their employment can be suggested, state the same.

4. Are the able-bodied females properly employed in household work, and in such other manner as is fitting, and as the board of guardians have directed ? if not, and if any improvement can be suggested, state the same.

5. Are the aged and infirm of both sexes kept in employment, as far as they are severally able ? are they all properly attended to, according to their respective conditions ?—if any thing objectionable is noticed, or any useful suggestion occurs, record the same.

6. Are the schools regularly attended to by the master and mistress ? are the youths, boys, and girls properly instructed and set to work, and is due care taken to fit them for becoming useful and respectable members of the community ?

7. Are the children kept clean in their persons, and does their general conduct and behaviour appear to be properly attended to and regulated ?

8. Do the inmates of the workhouse, of all classes, appear clean in their persons, and decent and orderly in their language and demeanour ?—if not, state the exceptions, and the names of the parties failing in this respect.

9. Is the separation of all the various classes within the house strictly enforced at all times ?—state particulars of every instance of deviation from the rules in this respect, if such shall have occurred ; and the particular attention of the visitors is directed to this very important point of discipline,

13. Is the established dietary duly observed? and are the hours of meals regularly adhered to?
11. Is divine service regularly performed in the house? are prayers regularly read?
12. Is regular attendance given by the medical officer?—inspect his last report.
29. For the performance of the duties and ensuring the observance of the rules herein set forth, the board of guardians shall appoint any or all of the following officers and servants, with such assistants as may be deemed necessary, that is to say,

Masters of the workhouses,
Matrons of the workhouses,
Schoolmasters,
Schoolmistresses,
Medical officers,
Porters,
Nurses,

who shall severally perform such duties as are herein set forth, together with all such other duties as the said board of guardians shall lawfully require them to execute.

30. The board of guardians shall allow to the several officers and servants of the workhouse so to be appointed, such amounts of salary or remuneration as the board may think fit, and as the Poor Law Commissioners shall sanction.

31. The board of guardians shall, at their discretion and when they think necessary, suspend from the discharge of their duties any master, matron, schoolmaster, or medical officer of the union, and forthwith report the same, together with the cause of such suspension, to the Poor Law Commissioners for England and Wales, for their decision thereon.

32. The board of guardians shall, from time to time as they shall think necessary, dismiss any of the other officers or servants of the workhouses not enumerated in the preceding Rule 31, and appoint others in their room, without prejudice, nevertheless, to the powers given to the Commissioners by the Poor Law Amendment Act.

MASTER.

Master.

33. The following shall be the duties of the Master of the workhouse:

1. To admit paupers into the workhouse, and to cause them to be examined by the medical officer, and to be cleansed, clothed, and placed in the proper wards, according to the regulations herein established.
2. To enforce industry, order, punctuality, and cleanliness, and the observance of the several rules, herein contained, by the paupers in the workhouse, and by the several officers, servants, and other persons therein employed.
3. To read prayers to the paupers before breakfast, and after supper every day, or cause them to be read—at which all the inmates must attend; but if any of the paupers shall profess religious principles indisposing them to unite in such service, they are to be permitted to sit apart, and not to be compelled to join in the same.
4. To inspect and call over the names of the paupers, according to Rule 14, immediately before morning prayers every day, and see that each individual is clean, and in a proper state.
5. To provide for and enforce the employment of the able-bodied adult paupers during the whole of the hours of labour; to train the youth in such employment as will best fit them for service; to keep the partially disabled paupers occupied to the extent of their ability; and to leave none who are capable of employment idle at any time.
6. To visit the sleeping wards of the first, second, and third classes at eleven o'clock every day, to see that they have been all duly cleaned and properly ventilated.
7. To see that the meals of the paupers are properly dressed and served, and to superintend the distribution thereof.
8. To say or cause to be said grace before and after meals.
9. To see that the dining halls, tables and seats are cleaned after each meal.
10. To visit all the wards of the male paupers at nine o'clock every night, and see that all the male paupers are in bed, and that all fires and lights are extinguished.
11. To receive from the gatekeeper the keys of the workhouse at nine o'clock every night, and to deliver them to him again at seven o'clock every morning.
12. To send for the Medical Officer in case any pauper is taken ill, and to take care that all sick and lunatic paupers be provided with such medicines and attendance, diet, and other necessities, as the medical officer shall in writing direct.

2. *Orders, &c.
for Government
of Workhouses
and Poorhouses,*

13. In case any pauper shall die in the workhouse, the master shall inform the medical officer, in order that he may examine into and certify the cause thereof in writing, for the information of the board of guardians; and the master of the workhouse shall also, so far as may be practicable, forthwith inform the friends of the pauper of his or her decease, in order that they may remove the body for interment; and in case the body is not so removed within a reasonable time, the same shall be interred at the expense of the parish to which the pauper belonged.
14. The master shall take charge of the clothes, and other articles, if any, of such deceased pauper, and shall deliver an inventory thereof to the next meeting of the board of guardians, who shall give the necessary directions respecting the same.
15. The master shall keep the following books, which shall be constantly open to the inspection of any of the guardians of the union, and be submitted to the board at their weekly meetings:—
 - An *Admission and Discharge Book*, according to the annexed Form A.
 - A *Store Account Book*, according to the annexed Form B.
 - A *Work Book*, showing daily the several kinds of work on which the paupers are employed, and stating the numbers occupied on each description of labour;—together with such explanations as shall be necessary for a clear understanding of the state of the labour department in all its details.
 - A *Register* of births and deaths of paupers which may take place in the workhouse.
16. At each weekly meeting of the board of guardians, to present or send to the board an *estimate* of such provisions and other articles as will be required for the use of the workhouse, and to receive and execute the directions of the board thereupon.
17. To receive all provisions and other articles purchased or procured for the use of the workhouse, and before placing them in store, to weigh, examine, and compare the same with the bills of parcels severally relating thereto; and after having proved the accuracy of such bills in all respects, to authenticate the same with his signature, and submit them to the board of guardians at their next meeting.
18. To receive and take charge of all provisions, clothing, linen, and other articles belonging to the workhouse or confided to his care by the board of guardians of the said union.
19. Not to purchase or procure any articles for the use of the workhouse, nor to order any alterations or repairs of any part of the premises, or of the furniture, or other articles belonging thereto, nor to pay any monies on account of the workhouse, or of the union, without the order, in writing, of the board of guardians, being first duly entered in the *Order Book* provided for that purpose.
20. To take care that the wards, rooms, larder, kitchen, and all offices of the workhouse, and all the utensils and furniture thereof, be kept clean and in good order, and that all the rooms and wards in the workhouse be lime-washed twice in each year.
21. To read over to the paupers the regulations herein contained at such times as the board of guardians shall direct.
22. To report to the board of guardians from time to time, the names of such children, or boys and girls, as it may be desirable to put out to service, or as apprentices, and take the necessary steps for effecting the same under the direction of the board of guardians.
23. To report all matters of interest or importance, as the same shall occur, to the guardians, and to keep them informed of the state of the workhouse in every department, as well as of the condition of the union generally, as far as he may be able to learn the same: and to offer suggestions to the guardians for the correction of abuses, and the introduction of improvements in the management of the workhouse; and generally to observe and fulfil all lawful orders and directions of the board of guardians, and likewise the rules, orders, and regulations already or to be hereafter issued by the Poor Law Commissioners for England and Wales.

MATRON.

Matron.

34. The following shall be the duties of the Matron of the workhouse:—
 1. To see that the in-door work of the establishment is, as far as possible, performed by the female paupers maintained therein.

2. To provide for and enforce the employment of the able-bodied female paupers during the whole of the hours of labour ; and to keep the partially disabled paupers occupied to the extent of their ability.
3. To visit all the wards of the females and children every night, and to ascertain that all the paupers in such wards are in bed, and the fires and lights duly extinguished.
4. To pay particular attention to the moral conduct and orderly behaviour of the female paupers and children ; to see that they are clean and decent in their dress and persons, and to train them up in such employments as will best fit them for service.
5. To superintend and give the necessary directions for making and mending the clothing supplied to the female paupers and pauper children ; and also the linen supplied to the male paupers of the union ; and to take care that all such clothing or linen be marked with the name of the union.
6. To see that every pauper in the workhouse has clean linen and stockings once a week, and that all the beds be supplied with clean sheets once a month.
7. To take charge of the linen and stockings for the use of the paupers, and any other linen in use in the house, and to superintend and give the necessary directions concerning the washing, drying, and getting up the same, and not to permit any to be dried in the sleeping wards, or of the sick or lunatic wards.
8. To take care, with the assistance of the nurses, of the sick paupers and young children in the workhouse ; to see that they are clean in their persons, and to provide such diet for the sick paupers and the young children as the medical officer shall direct, and to furnish them with such changes of clothes and linen as may be necessary.
9. To assist the master in the general management and superintendence of the workhouse, and especially in
 - Enforcing the observance of good order, cleanliness, punctuality, industry, and decency of demeanour among the paupers.
 - The cleansing and clothing of female paupers on their admission.
 - The cleansing and ventilating the sleeping wards and the dining halls, and all parts of the premises.
 - The placing in store and taking charge of the provisions, clothing, and linen belonging to the union or parish.
10. And generally to observe and fulfil all lawful orders and directions of the board of guardians, and the rules, orders, and regulations issued by the Poor Law Commissioners.

SCHOOLMASTER AND SCHOOLMISTRESS.

35. The Schoolmaster and Schoolmistress of the workhouse shall instruct the boys and girls in the house, as directed in rule 18.

MEDICAL OFFICER.

36. The following shall be the duties of the Medical Officer.
 1. To attend at the workhouse at such stated times as may be directed by the board of guardians, and also when sent for by the master or matron of the workhouse, in cases of sudden illness, accident, or other emergency ; and at all such other times as the state of the sick or lunatic patients within the workhouse may render necessary.
 2. To examine into the state of the patients in the sick and lunatic wards ; and also into the state of those sick paupers who have not yet been removed there, and also to examine into the state of the paupers on their admission into the workhouse.
 3. To ascertain and report to the board of guardians the cause and circumstances of every death which may take place in the workhouse.
 4. To give all necessary directions as to the diet, classification, and treatment of the sick and lunatic paupers, and to provide the requisite medicines, and to make up in writing, in the form and according to the instructions in schedule C., a register of the sickness and mortality which may have obtained amongst the paupers in the workhouse, together with such remarks on their general health and state as he may deem fitting, to be laid before the guardians at each weekly meeting of the board. In which book also, the medical officer shall insert the date of every attendance at the workhouse.

2. *Orders, &c. for Government of Workhouses and Poorhouses.*

Schoolmaster and Schoolmistress.

Medical Officer.

(C.)

REGISTER OF SICKNESS AND MORTALITY.										
Folio.	Name of the Patient.	Age.	Occu- pation.	To what Parish belong- ing.	Name of Disease.	Day of Com- mence- ment.	Treat- ment.	Day of Termin- ation of Disease.	Event.	Wine and Necessaries ordered for the Patient.

3. CIRCULAR STATING DUTIES OF PAROCHIAL OFFICERS.

POOR LAW COMMISSION OFFICE SOMERSET HOUSE,
1st March, 1836.

*To the Churchwardens, Overseers, and other Officers required to account for
the Expenditure of the Poor Rates. (a)*

1. By the order for keeping, examining, and auditing accounts, issued by the Commissioners under the authority of the Poor Law Amendment Act, it is required that the accounts of each separate parish, and also the accounts of every union, shall be made up quarterly and duly audited.

2. Under the late mode of administration, much money was unequally collected, or was altogether omitted to be collected, and much was improperly expended. Either from ignorance or neglect, many illegal practices have crept into the administration of relief, which, from their notoriety and general prevalence, have been supposed to be legal, and have frequently been continued in perfect confidence of their correctness. The Commissioners are aware that many of the charges thus illegally defrayed out of the poor-rates were incurred for useful public purposes, but all such illegal charges they are bound to disallow; and they have accordingly issued directions to the auditors to disallow them in the quarterly audit of the accounts. *The Commissioners have directed the following instructions to be issued to prevent you from incurring such charges unwittingly, and to save you from the consequences of their disallowance. (a)* Some of these instructions may not be strictly applicable to individual parishes governed under the provisions of local acts. The nature of such modifications as may be necessary in each case cannot be here specified, but will readily suggest themselves to persons acquainted with the provisions of the acts in question. (a)

3. Under the law as it stood previously to the passing of the Poor Law Amendment Act, the churchwardens and overseers were alone answerable for the whole of the expenditure for the relief of paupers; and the accounts of masters of work-houses, and other subordinate officers, were necessarily included in the accounts

(a) These were issued from the public office in explanation of the valuable improvements by the new system, and for the more explicit and familiar instruction and assistance of parochial officers, see *ante*, 6, 7. Moreover, greatly to the honour of the Commissioners and their

able secretary Mr. Chadwick, the utmost facility is constantly given to all reasonable enquiries by parochial officers and others; and no public office is distinguished more for ability and liberality in all communications connected with the department.

3. *Duties of Parochial Officers.*

of the churchwardens and overseers. Under the Poor Law Amendment Act, the obligation to account is extended to every officer or other person to whom money, or any goods, stock, or other property is intrusted; and the account must be regularly rendered for goods or stock as well as for money.

4. Formerly it was generally understood that the order of a magistrate or other superior authority, to any parish officer, was to be implicitly obeyed without any examination of its validity, and that the order of itself exonerated the officer to whom it was directed from all legal responsibility: but, by the 96th section of the Poor Law Amendment Act, it is enacted that thenceforth, from the passing of the statute, "no overseer shall be liable to any prosecution or penalty for not carrying into execution any illegal order of such justices or guardians; any law or statute to the contrary notwithstanding." As the accounts of every officer may be disallowed, so every officer, whilst he is bound to obey all orders which are legal, is equally bound to disobey all orders which are illegal, and will be personally answerable in either case.

5. On entering upon your office, you must obtain from your predecessors the balances of rates and other monies in their hands, and also ascertain whether there are any charges relating to the past year unliquidated. You must bear in mind that the law protects the present rate-payers from being charged with expenses incurred by former officers; and that, as a general rule, no items which relate to a past year can properly be brought into the account for the current year. The exceptions to this rule are, where the preceding officers have, from unavoidable circumstances and not from neglect, been unable to collect the rates, in which case they may be reimbursed for any advances made by them to the extent of the arrears of rates to be collected. Another admissible exception is, where the preceding overseers may have advanced sums of money during a time when no rate could have been enforced; as where an appeal has been depending, by which the whole of the rate was affected, in which case the succeeding overseers may reimburse their predecessors in office. So, again, where a legal charge has accrued so late as to render it impossible to make and collect a rate of which the former overseers might have been reimbursed, in which case it is lawful for the succeeding overseers to pay the charge.

6. It should be observed that, by the 47th section of the Poor Law Amendment Act, "all balances due from any guardian, treasurer, overseer, or assistant overseer, or other person having the controul and distribution of the poor-rate, or accountable for such balances, may be recovered in the same manner as any penalties and forfeitures are recoverable under this act; provided, nevertheless, that no such proceeding shall discharge the liability of the surety of any such treasurer, overseer, or other person as aforesaid."

7. All penalties and forfeitures under this act may be levied by distress and sale of goods and chattels, by warrant under the hand of two justices; and in case such forfeitures be not forthwith paid, the justices may order the offender to be kept in custody until return can conveniently be made to the distress warrant, unless the offender shall give sufficient security for his appearance on the return-day of the warrant; but if, upon the return of the warrant, there appears that no sufficient distress can be had, the offender may be committed to the common gaol or house of correction, to remain without bail or mainprize, unless such penalties and all reasonable charges be sooner paid.

8. By the act 43d of Eliz. c. 2, s. 1, the churchwardens and overseers are directed to raise, weekly or otherwise, competent sums of money for the relief of the poor. By the 4th section, the same officers are armed with powers to enforce the payment of such money and "of all arrearages." But the parish officers having been allowed a discretion, in point of time, for the collection of rates, abusive practices have crept in, under which the collections have been made at much longer intervals than those intended by the legislature. By neglecting to make frequent collections, large amounts have been required at each contribution from the rate-payer, and many persons who would have had no difficulty in paying smaller sums at more frequent intervals, have become defaulters. Through the length of these intervals, payment has also been frequently avoided by the removal of the rate-payers out of the parish. It has also been a mal-practice of churchwardens and overseers to favour some rate-payers by allowing them to continue in arrear for former rates, while more recent rates were in course of collection. By these neglects and mal-practices, the persons who pay the rates regularly have been unduly burthened, and much money has often been lost to the parish. It has, moreover, been a practice to harass particular individuals with collections, before the regular collection is made from the rate-payers generally.

9. To abate the evils which have thus grown up, and to limit the discretionary power under which they have been generated, it is now provided that the accounts shall be audited quarterly, and it will hereafter be requisite that you should regularly and impartially collect the rates, and pay all expenses incurred, and as far as practicable confine the quarterly accounts to the charges of the quarter.

10. It is proper to caution you that the quarterly audit now directed does not dispense with the usual yearly audit, and that any illegal charges which may escape the notice of, or be allowed by the auditors, at the quarterly audit, may nevertheless be disallowed or reduced by the justices at the yearly audit. The jurisdiction of the court of quarter sessions, on appeals from the allowances or disallowances of the yearly accounts of overseers by the justices remains in force, and the penalties to which overseers neglecting to account, or to deliver over balances or parish property, were made liable by former acts, may still be imposed by justices of the peace.

11. By the statute 43d of Elizabeth, the overseers or collectors of rates are bound to collect equally the rates from all persons. It is only upon the authority of justices that any individual occupier can be excused from the payment of rates. If, therefore, you find any person occupying a tenement, who from poverty is incapable of paying his rates, the only course which you can legally take is to submit the case to the magistrates, with evidence of the fact of inability—such as his being only in partial employment—his having suffered from calamities—and his living in a state of privation of the ordinary comforts or conveniences. Proof must be given of a state approaching to pauperism on the part of any occupier, to exempt him from the payment of the rates. Having upon such evidence, and not upon the mere assertion of the party, received the magistrates' order to excuse the party from the payment of the rate assessed upon him, you must preserve such order; for unless you are enabled to produce it as a voucher, you may be compelled to pay the amount which you would otherwise have been called upon to collect.

12. The only other deductions allowed to be made in the collection of the rates are, where property, not subject to the rate, has been assessed by mistake, as where property is exempted, or where it is unoccupied; also where persons have removed within the interval reasonably allowed for the collection of the rate, and have thus escaped payment in the regular course; but in every such case you are bound to collect the arrear thus accruing, and if necessary to resort to legal means for recovering the amount. You must be prepared with evidence to establish the grounds for these deductions from the full amount of the rate allowed; and, until the rate already allowed has been thus fully collected, no new rate must be applied for; and if applied for in any case, the justices are bound to withhold their sanction, and to require that the whole of the old rate should be first collected and accounted for.

13. Besides the poor-rates, you are bound to collect and bring to account the monies derivable to the parish from other sources, namely—

All rents, dividends, or other funds arising from bequests vested in the parish officers for the relief of the poor.

All payments by the natural relations of paupers, or by the parents of bastard children.

All repayments of relief given by way of loan, under the 59th Geo. III. c. 12, or under the Poor Law Amendment Act, &c.

All repayments, by other parishes, of the cost of relief to paupers under order of removal, or otherwise.

All earnings by paupers maintained by the parish in or out of the house.

All penalties, fines, and forfeitures, wholly, or in part, for the use of the poor;

As well as all other monies applicable to the same use.

14. Your attention will next be required to your duties in the expenditure of the rates and other monies so collected; and herein you must bear in mind, that usage is of no legal authority in the construction of the statute of Elizabeth, by which the poor-rates are established. The law has not given to the parish officers or even to the vestry any power of charging or of taxing their fellow-parishioners, even for useful purposes, at their own mere discretion; and no charge upon the poor-rates is legal, unless it is in plain words sanctioned or directed by some statute.

15. The following is a list of the statutes, under the authority of which the poor-rates are chiefly levied and expended:—

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Officers.**Authority.**Charges on Rates.*

43 Eliz. c. 2.	{ Setting to work the able. Relieving the impotent.
4 & 5 Will. IV. c. 76, (P. L. Amendment Act)	{ Maintenance of the poor in workhouses. Out-door relief to the aged and infirm. Out-door relief to the able-bodied. Out-door relief in cases of emergency. Casual relief to the poor. Medical relief. Relief to bastards.
9 Geo. IV. c. 40, s. 38	{ Charges of conveying and maintaining pauper lunatics.
5 Eliz. c. 4, and subsequent acts..	Putting out apprentices.
2 & 3 Anne, c. 6, and 4 Anne, c. 19	Apprenticeship to sea service.
2 Geo. III. c. 22	{ Register and regulation of parish poor infants within the bills of mortality.
4 & 5 Will. IV. c. 76, s. 58 (P. L. Amendment Act)	{ Loans to poor persons.
59 Geo. III. c. 12, s. 30	{ Loans to Greenwich and Chelsea pensioners. (The advances are recoverable quarterly, and an arrear of one quarter is not there- fore allowable.)
59 Geo. III. c. 12.	{ Providing land, &c. for the poor. (The au- thority must have been exercised under the direction of the Poor Law Commissioners.)
4 & 5 Will. IV. c. 76, (P. L. Amendment Act)	{ Emigration.
52 Geo. III. c. 16	{ Charges for relief to paupers during their confinement in gaols which are not county gaols.
5 Geo. IV. c. 85	{ Allowances to discharged prisoners. (These are recoverable from the treasurer of the county on application by the overseer.)
3 Geo. II. c. 29	{ Reimbursed charges to parish officers for main- taining and removing certificated persons.
4 & 5 Will. IV. c. 76, s. 84, (P. L. Amendment Act)	{ Costs of relief to persons under orders of removal.
9 Geo. I. c. 7; 22 Geo. III. c. 83; 59 Geo. III. c. 12; 4 & 5 Will. IV. c. 76, s. 21—25, (P. L. Amendment Act.)	{ Building, altering, enlarging, purchasing, hiring, and fitting up of workhouses.
4 & 5 Will. IV. c. 76, s. 14, (P. L. Amendment Act.)	{ Expenses of witnesses before Poor Law Commissioners where allowed by them.
4 & 5 Will. IV. c. 76, s. 82	Costs of appeals.
59 Geo. III. c. 12, s. 7	Salary to assistant overseer.
12 Geo. II. c. 29, &c.	County rate.
5 & 6 Will. IV. c. 76, s. 92, (Cor- poration Reform Act)	{ Borough rate in the nature of a county rate.
7 & 8 Geo. IV. c. 31, s. 15	{ Compensation by the hundred in places not contributing to the county rate.
7 Geo. IV. c. 64	{ Costs and compensations in the prosecution of felony in such places.
25 Geo. II. c. 36, s. 5; 58 Geo. III. c. 70, s. 7 & 8	{ Costs of prosecuting persons keeping disor- derly houses.
18 Geo. III. c. 19, &c.	{ Sums expended by constables in doing actual business of the parish, in the relief or re- moval of vagrants, &c.
11 Geo. IV. 1 Will. IV. c. 30, s. 10.	Making population returns.
6 Geo. IV. c. 50, s. 9	Printing a sufficient number of jury lists.

16. This list is not to be deemed complete, as by clauses inserted in various general acts as well as by many local acts, charges are in certain cases made payable out of the poor-rates for objects not connected with the original intention of the poor laws. In no case, however, except in relief of destitution, will it be safe to make any payments out of the poor-rates, unless sanctioned by the express

direction of some statute. In doubtful cases therefore the proper inquiry will always be "*Under what statute, or by what regulation is the proposed charge warranted?*" and, unless the authority can be found in the words of the statute, or in some lawful order or regulation of the Poor Law Commissioners, it must be presumed that the charge would be illegal.

17. By the 50th Geo. III. c. 49, s. 1, the justices (and by the Poor Law Amendment Act, auditors) are authorized to strike out of the overseers' accounts "all such charges and payments as they shall deem to be *unfounded*, and to reduce such as they shall deem to be *exorbitant*, specifying on the foot of such account every such charge or payment, and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same was disallowed or reduced."

18. With relation to the *unfounded* charges, the primary general rule has already been stated: namely, that all charges on the poor-rates are unfounded which are not authorized by some statute. With relation to the *exorbitant* charges, the general rule is, that all charges are exorbitant, on which the overseers have paid any person for goods or services at a higher rate than such goods or services were offered by any other competent person, or than they might be obtained for by a private individual resident within the same district.

19. The charges which must be struck out as unfounded, are those for relief given to persons who are not legally entitled to it, as not being in a state of necessity from destitution, and with relation to whom the securities prescribed by statute, or by the regulations of the Poor Law Commissioners, under the Poor Law Amendment Act, have not been complied with. By the 9th Geo. I. c. 7, s. 2, it is provided that "no officers of any parish shall (except upon *sudden* and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish, as a person entitled to receive collection; and as monies for the relief of such persons are directed not to be brought to the account, they must, if entered, be struck out. In unions, the "*Pauper Description Book*," the "*Weekly Relief Book*" for out-door paupers, and the "*Admission Book*" for in-door paupers, prescribed by the Poor Law Commissioners, will supersede the collection book required by the 9th Geo. I.

20. The cases of emergency which may legally be relieved, are generally cases of sudden and calamitous accident; and it is provided by the Poor Law Amendment Act, s. 54, that in parishes included in any union all such relief shall be given in kind, but not in money. The relief to be given will therefore be medicine, food, or clothing, as the nature of the case may be. No case can be considered a case of emergency, when there is time for the parish officers to put the pauper requiring relief upon the collection book as provided, and in general two or three days will be found to be the utmost limits of a case of emergency.

21. Those charges must be deemed unfounded and be disallowed in cases where, although it may have been lawful to give some relief, the relief actually given differs from that directed by the Poor Law Amendment Act, or by other statutes, or by the rules, orders, and regulations of the Poor Law Commissioners. By the 89th section of the Poor Law Amendment Act it is provided: "That all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this act, or at variance with any rule, order, or regulation of the said Commissioners, made under the authority of this act, shall be and the same are thereby declared to be illegal; any law, custom, or usage to the contrary notwithstanding. And every justice of the peace is thereby required to disallow, as illegal and unfounded, all payments, charges, or allowances, contrary to the provisions of this act, or to any such rule, order, or regulation of the said Commissioners, which shall be contained in any account of any overseer of the poor or guardian, which shall be presented for the purpose of being passed or allowed. Provided always, that no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules, orders, and regulations of the said Commissioners, or to the provisions of the act." It will therefore be necessary to bear carefully in mind the rules and orders of the Commissioners as to the mode in which relief is to be given.

22. Those charges must also be disallowed, as unfounded, which are incurred independently of, or against the directions of the board of guardians, if your parish is included in a union, or of a select vestry, or other persons exclusively authorized to give direction in the matter to which the payment relates, or to order relief under the 54th section of the Poor Law Amendment Act; since the only founda-

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tion for the charge in such cases is the order of an officer so authorized, the payment must be in obedience to that order, or the charge must be disallowed at the audit.

23. With respect to the charges more commonly found in overseers' accounts, but not authorized by any statute, they are such as follow, namely—

Charges for the performance of services for which the law has not sanctioned any payment:—The duties of overseers are compulsory, and are required to be performed gratuitously. Those upon whom the office is imposed are legally bound to perform the whole of the duties themselves, and are not entitled to charge for assistance. Any of the following charges are therefore entered illegally where treated as payments for the services of constables, vestry clerks, &c.

Charges for coroners' inquests, and charges properly payable out of the church-rates, must be disallowed, as unfounded charges upon the poor-rates; so also

Charges for salaries to overseers, under the title of "permanent overseers."

Charges for the trouble of the overseer or other person in paying county-rates.

Charges for filling up parliamentary returns (except such charges as are allowed by the 11 Geo. IV. and 1 Will. IV. c. 30, s. 10, for making the population returns.)

Charges for loss of time in attending justices or revising barristers.

Charges for dinners, or other illegal charges usually concealed under the head of "expenses of attendance."

Charges for dinners and the entertainments of parish officers, often concealed under the item, "expenses of meetings," or otherwise.

Charges for the extirpation of vermin; for killing birds and badgers.

Charges for marrying paupers, also fees for churching women, and christening children, when not receiving relief within a workhouse; likewise excessive charges for tolling bells at paupers' funerals.

Charges for the prosecution of public offences: such prosecutions being in no way incidental to the office of overseer, unless made so by the express provision of some statute.

24. The parish officers who are bound to account for the expenditure of the parish monies are also bound to account in a proper form. The accounts of any officer which are not made out conformably to the rules of the Poor Law Commissioners, declaring the manner in which accounts are to be kept, cannot be received.

25. Where a general balance sheet is prepared, without the requisite detail of dates and expenditure, or where gross items are inserted which may conceal the nature of the individual charges and payments, and thus place impediments in the way of determining whether the receipts be completely accounted for, or whether any of the charges are unfounded or exorbitant, the accounts must be disallowed—and no items named "sundries," "miscellaneous," or "incidental expenses," can be admitted, without the whole of the details included under those heads being first fully explained on the face of the account.

26. You must also be prepared to prove that the regulations of the Commissioners for giving notice to the rate-payers have been observed, and that proper opportunities have been afforded to all who choose to examine the accounts; and you must also be prepared to verify upon oath the accuracy of all your charges, if required to do so.

You are requested to transfer this communication to your successors in office.

By order of the Board of Poor Law Commissioners for England and Wales,

EDWIN CHADWICK,

Secretary.

4. STATEMENT OF THE DUTIES OF AUDITORS OF UNIONS.

Poor Law Commission Office, Somerset House,
25th June, 1836.

SIR,

ALTHOUGH the order for keeping, examining, and auditing the accounts issued to your union contains a general outline of your duties as auditor, yet as it is impossible in an instrument of that nature to convey such detailed explanations as are necessary for the due understanding of the subject, the Poor Law Commissioners

for England and Wales deem it right to address to you this communication, with the view of relieving you from those doubts and difficulties which (from the various letters of inquiry and applications for information received by the Commissioners,) appear to have embarrassed several of the auditors in the performance of their duties.

The Commissioners were well aware that the introduction of a strict and efficient system of auditing the accounts connected with the relief of the poor, in lieu of the annual examination by the magistrates, which from unavoidable circumstances has in many cases been of a formal nature, might expose the parties bound to account, to some personal loss in consequence of payments made by them, which, although not authorized by law, had the sanction of usage, and which, from having uniformly been made through a long course of years, might have appeared to be both legal and necessary. The Commissioners accordingly directed the enclosed instructional letter to be transmitted previous to the Commencement of the last quarter, to all parochial and union officers bound to account, containing full information as to the description of the expenditure which they are by law authorized to continue. To this letter they request your particular attention, as it will serve also for your own guidance as to the monies which it will be your duty to see brought to account; and likewise as to the description of the charges which you will be bound to disallow.

1. The first step, as a preliminary to the audit, will be to forward a notice to the union officers, for the production of the accounts; and also to direct the clerk of the union to cause notice to be served on the several parish officers of the parishes included in the union, who are still bound to account.

2. These notices should be sent, or served, six clear days previous to the respective days which you shall appoint for the audit of the union and parochial accounts respectively. You should ascertain also that notice of the day appointed for the audit of the union accounts has been affixed to the door of the workhouse, and that the union ledger, and the abstract of the union accounts, have been left open in the board room of the guardians for the inspection of the rate-payers.

3. When the accounts are submitted to you, it will be your duty to see that they are made out in the form prescribed by the Commissioners. You will observe that by the before-mentioned order for keeping, examining, and auditing accounts, it is directed that the clerk to the board of guardians shall, at the common charge of the union, provide the requisite books and forms of accounts. Where proper books have not been provided, you will give instructions for immediately supplying the deficiency, and if you deem it necessary you will report the omission to this office; and where the accounts have been erroneously entered, you will take measures for the prevention of the irregularity in future. You will bear in mind always, that a main part of your duty as an auditor will be to examine, as part of the accounts, all returns or books ordered to be kept as a record of any operations or matters which relate to the management of the relief. You will therefore examine the pauper description lists; the medical relief lists; the register of sickness and mortality; to see that they are correctly made out, observing that these accounts are to be kept to show the main facts upon which relief is given, and serve as the justification of the officer and the board of guardians in granting relief, and also a record of the treatment given. You will also see that in the quarterly union abstracts, the quantities as well as the qualities, and the prices of the goods supplied are correctly stated, and returned to the commissioners. The officers will be responsible for any essential mis-statement contained in these accounts.

4. Having ascertained that the necessary preliminaries and forms have been observed, you will enter upon an examination of the accounts in detail. In order to facilitate such examination, the commissioners have to offer to you the following instructions and explanations; and first, as respects the parochial accounts. In the parochial as well as in the union accounts, you will ascertain that all sums which ought to be received, and all sums which have been actually received, are duly accounted for; and that all that is stated to have been expended has actually been expended: and you will determine whether the actual expenditure is truly stated, and has been made in conformity to the law.

5. You will observe that it forms no part of your duties as auditor to determine questions as to the proportions or equality of the assessment; the justices at sessions being the proper judges to decide on such points.

6. After the examination of the rate books, and the collectors' accounts, you will next call for the terriers of lands and inventories of stock, and see that the income from those sources, if applicable to parish purposes, is properly brought to account. You will also examine the paupers' description lists for the cases of those to whom relief has been given by way of loan; as well as of persons bound to

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Auditors.*

contribute towards the support of pauper relations, and ascertain the amount of arrear, and the amount recovered, of this class of payments.

7. It is your duty to aid to the utmost in the advancement of a regular systematised and efficient management in parishes and unions, and it may be considered as evidence of improved management when the minor sources of income, and the outlets of expenditure (which have hitherto been most frequently overlooked,) are found to be vigilantly examined and secured. See Paragraph 13 of the Instructional Letter to Parish Officers.

8. In examining the accounts of the relieving officers you will not pass charges for relief given to any person whom the guardians did not previously authorize the officers to relieve, or the relief which the guardians did not confirm after it was given.

9. In auditing this description of accounts, you will keep constantly in view the orders of the Commissioners for regulating the mode in which relief may be given to the various classes of paupers. You will examine the pauper description lists, to ascertain how far the descriptions are truly and completely entered by the proper officer; and you will then compare them with the statements of the amount of relief actually given, and especially examine the cases of emergency, and the alleged grounds of deviation from the prescribed and ordinary mode of administering relief, if such shall occur.

10. As regards casual relief, from the facilities arising from neglect, consequent on the trivial nature of the items, when viewed separately, and from the too easy admission of overcharges as mistakes, considerable frauds have been heretofore committed in this description of expenditure. You will therefore let no such class of items pass without due inquiry and investigation.

11. When you find that the relief which has been given to a pauper of any class has been given in contravention of the orders and regulations of the Commissioners, you are bound to disallow such relief.

12. In examining the accounts of the master of the workhouse, you will ascertain that all the goods have been duly ordered; and you will compare the quantities of provisions consumed, with the number of paupers actually in the workhouse at different periods of the quarter, as shown in the admission and discharge book, and you must allow no charge to pass in respect of any pauper who was not regularly admitted.

13. With regard to the books of the medical officer, you will have to consult them chiefly in order to see that the descriptions of the maladies of the paupers in the relieving officers' books are correct, and that the allowances of wine and diet or other special relief for the sick appearing in the books of the relieving officer or the master of the workhouse, were duly sanctioned by the medical officer, and approved by the guardians.

14. You will check the several chief accounts in the manner following:—The out-relief account in the ledger, by comparing it with the subsidiary books of the relieving officer, and the weekly minutes of the settlement of the same in the minute book of the board of guardians; the in-maintenance account, by comparing it with the subsidiary relief lists and provision book of the master of the workhouse, and the weekly minutes of the settlement of the same in the minute book, and with the clothing account in the ledger; the establishment charges, by comparing all salaries and other payments necessary to be sanctioned by the Poor Law Commissioners with their orders thereon, and with the minutes of the guardians, and the bills and vouchers applicable thereto; the treasurer's account, with the minute book, and the several checks directed therein to be drawn.

15. Where the clerk is an attorney, and brings in a bill for professional services, which he considers not to be expressly or impliedly remunerated by his salary, you must refer to the terms of his engagement as to his claim to such extra remuneration for any other expenditure than his costs out of pocket. If the terms of his engagement do not include his professional services, you must regard him first solely in his capacity of clerk, and allow no extra charge for any work or services which the clerk if he had not been a professional man might have performed; and then you must consider him in his professional capacity as a person unconnected with the union, and require that the board's authority be produced for the undertaking of the proceedings or other business which are the subject of the charge, and which would not come within his general duty as clerk.

16. Where the law has made an exemption from any charge in favour of the rate-payers, the advantage of the exemption should not be allowed to be lost through the negligence or inadvertence of the officers. Thus the appointments of paid officers of the union; and all instruments made in pursuance of the orders of

the Commissioners, are exempted from stamp duty by the 86th section of the Poor Law Amendment Act, as are indentures of parish apprentices by the Stamp Act.

17. In carrying through the audit, you will bear in mind that clearness and apparent completeness is not a proof of truth in the accounts; and whilst you pass no obscurity in them without investigation, you should not pass even an orderly stated account on trust; but should from time to time select items, indiscriminately or otherwise, from each class of charges, and ascertain their reality and correctness.

18. You will observe generally, whether the items which you collate in the accounts intended to check each other, have reference to the same subject; and whether the dates, names, persons, places, and other circumstances properly correspond.

19. In the course of the detailed examination, you should note down in writing every error in casting; every erasure which tends to throw suspicion upon particular charges, items, or vouchers; every deficiency or irregularity in the vouchers, or in the general correctness and truth of the transactions, together with any deviation from the orders of the commissioners, or the provisions of the law, and any expenditure of an unusual or exceptionable description.

20. Any doubts which you may deem of sufficient importance, you may refer to the Poor Law Commissioners, or to their Assistant Commissioner, who will give you their opinion and advice upon the subject.

21. The amount of all disallowances and surcharges must be charged against the person accounting; and should there not be a balance to cover the amount in the current quarter, the difference may be carried forward against him in the succeeding quarter's account. But, ordinarily, it should be required to be paid at the time; and if not paid, it will be your duty to report the same to the Commissioners, and under their directions to take proceedings for recovering the amount, in the same manner as penalties under the Poor Law Amendment Act.

22. Where it appears to you that the accounts of any paid officer are fraudulent, or so far incompletely kept, from negligence or wilfulness as to prove his incompetency, it will be your duty immediately to report the circumstances to the Commissioners.

23. In order to illustrate the routine of an audit, the following specimens are given of the vouchers and evidence required to sustain a few items of charge.

Items of Charges.	Vouchers, &c. required to support the Items.
1. Buildings on account of the union or parish	Resolution of board of guardians thereon. The Poor Law Commissioners' order or sanction. Copy of the contract with the builder, &c. and the plan. The surveyor's certificate of the work executed, and that it has been done to his satisfaction. The minute of the board of guardians to the same effect, at the close of the quarter.
2. Furniture	Besides the usual authorities and vouchers, call for the inventory, and see that the articles are duly inserted; if necessary, trace or require them to be pointed out.
3. Law expenses	The board's direction to the attorney. The attorney's bill (taxed, if taxable, by the proper officer.) The board's order to pay the bill. The receipt <i>in full</i> of all demands respecting the subject-matter.

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Items of Charges.	Vouchers, &c. required to support the Items.
4. Bread made and consumed ..	Compare the quantities of flour or wheat purchased, with the proportion of bread produced.
5. Articles sold	Compare the cash accounts with the store accounts.
Articles destroyed, lost, or wasted	Require a certificate or proof of the destruction, loss, or waste.
6. Salaries of officers and servants of the union	The appointment by the board of guardians, and the sanction of the board of Poor Law Commissioners.

24. If there be an increase of the number of any class of paupers, or in any branch of the expenditure, you will report thereon, and state the cause of it as far as you can ascertain, for the information of the Commissioners ; as also on any decrease arising from any peculiar occurrence within the union. You will likewise be pleased to report to them any improvements of which the mode of transacting the business of the union may appear to you to be susceptible ; and generally on any matters connected with the state of pauperism in the union, or in the district in which it is situate.

I have the honor to be,
Sir,

Your very obedient Servant,
EDWIN CHADWICK, Secretary.

To the Auditor of the Union.

5. Specimen of the Form of a Union.

5. SPECIMEN OF THE FORM OF A UNION.

In pursuance of an act of parliament passed in the 4th and 5th years of the reign of his present Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," the Poor Law Commissioners for England and Wales do hereby order and declare, that the parishes and places, the names of which, and the city, county, or counties wherein they are situate, are specified in the margin of this order, together with all hamlets, tythings, liberties, or other subdivisions lying within, or belonging or adjacent to, any of the said parishes and places, shall on the second day of February next be, and thenceforth shall remain, united for the administration of the laws for the relief of the poor, by the name of the Union, in the county of . And that a board of guardians of the poor of the said union shall be constituted and chosen according to the provisions of the Poor Law Amendment Act, and in manner hereinafter mentioned.

Names of the Parishes united.

1. Clutton.
2. Camely.
3. Hinton Blewett.
4. Stowey.
&c. &c.

1. Number and Constituency of Guardians.

1. Number and Constituency of Guardians.

1. The number of the guardians shall be , of which number shall be elected for the parish of ; two for each of the parishes of ; and one for each of the other parishes in the union.
2. But the same person may be elected guardian for more than one parish, agreeably to sec. 40 of the Poor Law Amendment Act.

2. Duration of the Office.

2. Duration of the Office.

The guardians first elected will continue in office until the day hereinafter appointed for the annual election of guardians, and thenceforward the said office

shall be held for one year; but the same person who may have been a guardian for any past year may be re-elected a guardian for any ensuing year.

3. Qualification of Guardians.

Any person who shall be rated to the poor-rate in some parish in the union, in respect of hereditaments, of the annual value or rental of not less than twenty-five pounds, and who, within two years next previous to the day of election, shall not have been dismissed from any office in any parish or union by order of the Poor Law Commissioners, shall be eligible as a guardian for any of the said parishes.

4. Qualification of Voters for Guardians, and Scale of Voters.

1. Any rate payer who shall have been rated to the poor-rate in any parish in the union for the whole year immediately preceding his voting, and shall have paid the parochial rates and assessments made on him for one whole year, as well as those due from him at the time of voting, except those which have been made or become due within the six months immediately preceding such voting, will be entitled, on the election of the guardian or guardians for such parish, to the number and proportion of votes specified in sect. 40 of the Poor Law Amendment Act; that is to say,--

If he be rated or assessed at any sum under 200 <i>l.</i>	he will have 1 vote.
If he be rated or assessed at 200 <i>l.</i> but under 400 <i>l.</i>	he will have 2 votes.
And if rated or assessed at 400 <i>l.</i> or upwards	he will have 3 votes.

2. Any owner of ratable property, situate within any such parish, who shall have given to one of the churchwardens and overseers thereof, on any day previous to the day on which he shall claim to vote, a statement, in writing, of his name and address, and the description of the property in the parish or place, as owner whereof he claims to vote, will be entitled to have the same number and proportion of votes, on the election of the guardian or guardians for such parish as is provided for inhabitants and other persons by the Parish Vestry Acts, 58 Geo. III. c. 69, and 59 Geo. III. c. 85; that is to say,--

If the aggregate amount of the assessment for the time being of any property belonging to such owner in such parish, or on any person or persons in respect of the same to the poor rate, shall not amount to 50 <i>l.</i>	he will have 1 vote.
If the same shall amount to 50 <i>l.</i> and not to 75 <i>l.</i>	he will have 2 votes.
If the same shall amount to 75 <i>l.</i> and not to 100 <i>l.</i>	he will have 3 votes.
If the same shall amount to 100 <i>l.</i> and not to 125 <i>l.</i>	he will have 4 votes.
If the same shall amount to 125 <i>l.</i> and not to 150 <i>l.</i>	he will have 5 votes.
And if the same shall amount to 150 <i>l.</i> or upwards	he will have 6 votes.

3. Any owner who shall be *bona fide* an occupier of any such property will be entitled to vote, as well in respect of his occupation as of his being such owner.

4. The form marked A. hereto annexed, may be followed by owners of property, in making such statements of their claims to vote.

5. Any owner of such property may from time to time, by writing under his hand, appoint any person to vote as his proxy; but such proxy must, previous to the day of election, give to one of the churchwardens and overseers of such parish, a statement, in writing, of the name and address of his principal, and a description of the property in the parish or place, as proxy to the owner whereof he claims to vote; and also an original or attested copy of the writing, appointing him such proxy.

6. The forms marked B. 1 and 2, hereto annexed, may be followed by owners of property in appointing proxies, and by such proxies in making their claims.

7. The churchwardens and overseers shall enter in the rate-books of such parish, or in some other book, to be from time to time provided for that purpose, the names and addresses of the owners and their proxies, who shall send such statements, and

5. Specimen of the Form of a Union.

3. Qualification of Guardians.

4. Qualification of Voters for Guardians, and Scale of Voters.

5. *Specimen of the Form of a Union.*

the assessment of the poor-rate on the property, in respect whereof they severally claim to vote.

8. The register or book of the statements of owners who have claimed to vote, and of proxies, may be kept in the form marked C., hereto annexed.

5. *Days of Election.*

5. *Days of Election.*

The following shall be the days for the election of guardians:—

For the first election of guardians the day of election shall be the second day of February next.

For the annual election of guardians the day of election shall be the first Thursday after the 25th day of March in each year.

6. *Notice of the Election.*

6. *Notice of the Election.*

1. The churchwardens and overseers of every such parish shall fill up and sign, and shall, on or before the twenty-third day of this instant January, affix on the principal door of every church and chapel within such parish, or in such other place as is ordinarily made use of for affixing notices of parochial business, a notice in writing according to the form marked D., hereto annexed, of the first election of guardians, and shall also give such notice in such other mode as may usually have been adopted in the parish for giving notice of parochial business.

2. Of the annual elections the clerk to the board of guardians shall, from year to year, give thirteen whole days' notice, in the form marked E., by an advertisement, to be inserted at the expense of the union, in some newspaper or newspapers generally circulated in the district wherein the place of meeting of the guardians of such union shall be situate; but the rest of the proceedings of the annual election shall be conducted by the churchwardens and overseers of the said respective parishes as in the case of the first election.

7. *Mode of proposing a Guardian.*

7. *Mode of proposing a Guardian.*

1. Any rate payer or owner of property in any parish in the union, being entitled to vote, may propose as a guardian or guardians for such parish, any person or persons, not exceeding the number to be elected for such parish, having the qualification hereinbefore prescribed for that office.

2. Any person having such qualification may propose himself for that office.

3. In either of the above-mentioned cases the proposer shall, at least six whole days before the day of election, deliver or cause to be delivered to one of the churchwardens or overseers a nomination in writing, according to the form marked F. hereto annexed.

8. *Mode of Election.*

8. *Mode of Election.*

1. The churchwardens and overseers of every such parish shall examine, within two days next after the last day upon which the names of the persons proposed as candidates could be delivered in, the nomination papers which have been delivered to them.

2. If any person put in nomination for the office of guardian shall, by writing under his hand, delivered or sent to such churchwardens and overseers, declare his refusal to execute that office, he shall not be considered to be a candidate for the same.

3. If the number of candidates duly qualified and duly proposed as aforesaid for such parish shall not exceed the number to be then elected, the candidates so proposed shall be declared duly elected.

4. But if the number of candidates so duly qualified and proposed as aforesaid shall exceed the number to be then elected, the churchwardens and overseers shall prepare or cause to be prepared a sufficient number of voting papers, according to the form marked G., hereto annexed.

5. Two days at least before the day fixed for the election the churchwardens and overseers shall deliver or cause to be delivered such voting papers at the houses of those persons and proxies who are entitled to vote, and are resident within such parish.

6. On the day of election the churchwardens and overseers shall call for and collect the said voting papers which have been so delivered.

7. All persons and proxies who are entitled to vote, but are not resident within such parish, and all persons who entitle themselves to vote on or after the day on which such voting papers are delivered, either by delivering such statement as above mentioned, or by paying up arrears of rate or otherwise, shall, on the day of election, apply for voting papers at the place appointed by the churchwardens and

overseers for that purpose (who are hereby required to furnish the same), and having filled up such voting papers, shall deliver them to the churchwardens and overseers, or the person employed by them to collect such voting papers, before noon on the day of election.

5. *Specimen of the Form of a Union.*

8. No person employed in distributing or collecting the voting papers, or otherwise executing these orders, shall canvass the voters for any candidate, or do any thing by which the return of any candidate, or of any class of candidates, may be unduly influenced.

9. In the afternoon of the day of election the churchwardens and overseers shall add up the votes given in the form prescribed; and the candidate or candidates (as the case may be), having the majority of votes shall be duly elected.

10. But in such calculation of votes every person who shall not vote, or shall not comply with the directions herein contained for the giving and returning of votes, shall be omitted.

9. *Notice of the Appointment and Return of Guardians.*

9. *Notice of the Appointment and Return of Guardians.*

The churchwardens and overseers of each such parish and place shall forthwith notify to the guardian or guardians elected, the fact of his or their election by a letter or communication in writing, in the form marked H., hereto annexed, signed by them; and shall affix on the principal door of every church and chapel in such parish and place a notice of the guardian or guardians elected, in the form marked I., hereto annexed; and shall also make to the first meeting of the board of guardians next after such election, a return in writing in the form marked J., hereto annexed, of the guardian or guardians so elected.

10. *Explanation of Terms.*

10. *Explanation of Terms.*

1. Whenever the signatures of the churchwardens and overseers are required in this order to be subscribed to any notice or other document appertaining in any manner to the said elections, it shall not be necessary that the signatures of more than two of the churchwardens and overseers, or either of them, be subscribed to the same.

2. Whenever the word "parish" is used in this order it shall be taken to include any tything, hamlet, or place separately maintaining its poor, and hereinbefore directed to be united.

Given under the hands and seal of us, the Poor Law Commissioners for England and Wales, this thirteenth day of January, in the year one thousand eight hundred and thirty-six.

THE FORMS ABOVE REFERRED TO.

N. B.—The following Forms, A. and B. 1 and 2, may be followed by Owners of Property in making their claims to vote, or in appointing Proxies and by such Proxies making their claims, but any other Form to the same effect will be sufficient.

Form A.—Owner's Claim to Vote.

To the Churchwardens and Overseers of the parish of

This day of 183 ,

I, of claim to be entitled to vote according to the provisions of the 4th and 5th Will. IV. c. 76, as owner of the property herein described, the whole of which is situate within the parish of viz.

[" One House," or " Farm," &c. situate at]

Form B. 1.—Appointment of Proxy.

To the Churchwardens and Overseers of the parish of

This day of 183 ,

I, of being owner of the property hereinafter described, the whole of which is situate in the parish of do hereby appoint of to vote, until the present appointment is revoked, as my proxy, in all cases

5. Specimen of
the Form of a
Union.

wherein he may lawfully do so, under the provisions of the 4th and 5th Will. IV. c. 76. And the property of which I am owner, and in respect of which I appoint the said to vote as my proxy, is as follows, viz.—

[“ One House,” or “ Farm,” &c. situate at]

Form B. 2.—Application of Proxy.

To the Churchwardens and Overseers of the parish of

I, of having been appointed by of This day of 183 to vote as his proxy, under the provisions of the 4th and 5th Will. IV. c. 76, do hereby claim to vote as such proxy. I herewith transmit to you such my appointment, in the handwriting of, [or “signed by”] the said [or “an attested copy of my appointment, the original of which is in the handwriting of, [or “signed by”] the said ”] And the property situate in the parish of in respect of which the said is entitled to vote as owner, and in respect of which I do hereby claim to vote as his proxy, is as follows, viz:—

[“ One House,” or “ Farm,” &c. situate at]

And I do hereby require you to enter my name and address as above, and the assessment of the rate for the relief of the poor, on the property above described, in the book or books directed by the said act to be provided for the purpose.

Form C.—Book for Registry of Owners of Property and Proxies.

Parish of

No.	Name of Owner.	Address.	Property in respect whereof right to vote is claimed.	No. of reference to Rate Book.	Aggregate amount of assessment.	Name of Proxy.	Address of Proxy.	No.	Date on which Claim received

We do certify that the above is a full and correct register and entry of the claims to vote of owners of property and proxies in the said parish, and we do declare that all the entries of reference to the rate book, amount of assessment, number of votes, and dates on which claims were received, are true.

(Signed)

} Churchwardens.
} Overseers.

Form D.—Notice of the First Election,

Union.

Election of Guardians of the Poor for the of
We, the undersigned, being the churchwardens and overseers of the poor of the of do hereby give notice, that on the day of we shall, in pursuance of an order and declaration of the Poor Law Commissioners of England and Wales, proceed to the election of guardians of the poor for this to act as members of the board of guardians, to be elected for the union, which has been declared by the said Commissioners to take place from the day of in this present year.

Qualification of a Guardian.

[Here insert a copy or correct abstract of Section III. of the Order.]

5. Specimen of
the Form of a
Union.

Qualification of Voters.

[Here insert a copy or correct abstract of Section IV. of the Order, Art. 1, 3, & 5.]

Time for proposing Guardians.

Any person entitled to vote may propose a guardian; but he must send his proposal to one of the churchwardens or overseers, in writing, on or before the day of in the following form:—

[Here insert the form of Nomination Paper, F.]

No person can be elected guardian who has not been proposed in the manner above mentioned.

Mode of Voting.

In case more candidates shall be duly proposed than the number of guardians to be elected, a voting paper will be left on the day of at the house of every person residing in the who at that time shall be entitled to vote. The votes must be given in writing in such voting papers, which will be called for again on the day of election.

All other persons who on the day of election shall be entitled to vote, must on that day apply for voting papers to one of the churchwardens and overseers, and must return them filled up before noon of the same day.

Signed by us, this day of 183 .

} Churchwardens.

} Overseers.

Form E.—Notice of the Annual Election of Guardians of the Poor.

Union.

The churchwardens and overseers of the several parishes comprised in the above union, and hereinafter named, will, in pursuance of the order of the Poor Law Commissioners for England and Wales, proceed on the day of to the election of the number of the guardians of the poor set opposite the names of such parishes for the year ending

Parish A. 10 guardians.

B. 5 guardians.

C. 3 guardians, &c. as the case may be.

Any person entitled to vote in any of the said parishes may propose as the guardian or guardians thereof any number (not exceeding the number to be there elected) of persons who are severally rated to the poor rate of any parish in the union in respect of property of the annual value or rental of £ . The proposal must be written, and must state the names, residences, and callings, of the persons proposed, and the name of the proposer, and must be delivered to one of the churchwardens and overseers of such parish on or before the day of

Owners of rateable property in such parish, as well as rate-payers, are entitled to vote, provided their names are on the register of owners, or if they send in to the churchwardens and overseers before the day of election their claims to vote, with a statement of their names and address and a description of their property.

Owners may also vote by proxy; but proxies must make the statements above mentioned for their principals, and transmit to the churchwardens and overseers the originals or attested copies of their appointments.

In case of a contest for the office of guardian in any of the said parishes the votes will be given in papers to be left by the churchwardens and overseers two days at least before the day fixed for the election, at the houses of those residents of the parish who are then entitled to vote. All residents out of the parish, and all persons who become entitled after that day, must apply to one of the churchwardens and overseers for voting papers on the day of election.

The forms of nomination papers, statements of owners, and appointment of proxy, may be seen and copied by voters at the board room in the

A. B. Clerk to the board of guardians.

5. Specimen of
the Form of a
Union.

Poor.—APPENDIX.

Form F.—Nomination Paper.

To the churchwardens and overseers of the parish of

Name of the Person or Persons proposed as Guardian or Guardians.	Residence and Quality or Calling of the Person or Persons proposed.

I nominate the above to be guardian [or "guardians"] for the said parish, for the
year ending

Signature and address of proposer.

This paper must be delivered to one of the churchwardens or overseers at least six
whole days before the day of election.

Form G.—Voting Paper.

VOTING PAPER for the Parish of		
Names of the Persons pro- posed as Guardians.	Residences and Qualities or Callings of the Persons proposed.	Names of the Proposers.

[Hereunder the voter or proxy must insert in his own handwriting* the name
or names of such of the above candidates as he votes for.]

I vote for

Signature of voter or proxy.†

* If the voter cannot write, his mark must be attested by a witness, and the
name or names of the parties for whom he votes must be inserted in his presence
by the attesting witness.

† If the proxy votes, he should sign his name, and add for whom he is proxy,
thus :—M. N. proxy for P. Q.

Take notice, this paper must be carefully preserved by the voter, as no second
paper will be given. When it is filled up, it must be kept ready for delivery to
and the collecting officers, who will call for the same on the
day of

No other person can be allowed to receive the voting paper ; if it be not ready for
the collectors when they call the votes will be lost. They will also be lost if more
than names be returned as voted for.

Form H.—Letter to Guardians Elected.

Union.

day of 183 .

SIR,

We, the undersigned, being churchwardens and overseers of the poor of the parish

2. Rules &c. of the Poor Law Commissioners.

1035

of do hereby give you notice and declare that on the
were duly proposed as a guardian of the poor of the parish of
day of you were elected such guardian.

(Signed)

day of you
and that on the

5. Specimen of
the Form of a
Union.

} Churchwardens.
}
} Overseers.

Form I.—Notice of the Guardians Elected.

Union.

We, the undersigned, being churchwardens and overseers of the poor of the parish
of do hereby give notice that resident at were proposed as
guardians of the poor of the said parish, and that on the day of were
elected ["without opposition," or "by a majority of the number of votes for
the several candidates being as follows," &c. as the case may be.]

(Signed)

} Churchwardens.
}
} Overseers.

Form J.—Return to the Board of Guardians of the Guardians Elected.

Union.

We the churchwardens and overseers of the poor of the parish of do hereby
certify that on the day of we affixed a notice for the election of guar-
dians on the principal door of the church in the said parish, and that on the
day of were proposed by and that on the day of were
elected ["without opposition," or "by a majority of the number of votes for
the several candidates being as follows," &c. as the case may be,] and that on the
day of notice of such election was duly given to the guardians elected,
and affixed on the church door.

(Signed)

} Churchwardens.
}
} Overseers.

6. FORM OF BOND OF A RELIEVING OFFICER.

6. Form of Bond
of a Relieving
Officer.

KNOW ALL MEN by these presents, that we, C. D. of, &c., E. F. of, &c.,
and G. H. of, &c. are jointly and severally held and firmly bound to the
guardians of the poor of the union, in the county of , in the
sum of pounds of good and lawful money of Great Britain, to be
paid to the said guardians, or their certain attorney, successors, or assigns,
for which payment to be well and faithfully made, we bind ourselves
jointly, and each of us bindeth himself severally, our and each and every
of our heirs executors and administrators, and every of them, firmly by
these presents, sealed with our seals. Dated this day of in
the year one thousand eight hundred and thirty-seven, in the year
of the reign of his Majesty King William the Fourth.

WHEREAS by an order, bearing date the day of one thousand eight
hundred and thirty- , under the hands and seals of the Poor Law Commissioners
for England and Wales, acting under the powers and authorities of an act passed in
the 4th and 5th years of the reign of his present Majesty King William the Fourth,
intituled "An Act for the Amendment and better Administration of the Laws re-
lating to the Poor in England and Wales," it was declared that the several parishes
of [enumerate the parishes carefully] in the county of should be united
for the administration of the laws for the relief of the poor, by the name of the
union, and that a board of guardians should be elected for such union; and

6. Form of
Bond of a Re-
lieving Officer.

such board of guardians hath been duly elected accordingly; and in and by the rules, orders, and regulations, prescribed by the said Poor Law Commissioners for the direction of such board, it was, amongst other things, directed, that the said board should, in manner therein mentioned, appoint such and so many competent person or persons as the said board of guardians should think fit, to be a relieving officer or relieving officers of the said union, and should likewise determine the parishes or places for which each such relieving officer should act, and that no person should be chosen as such relieving officer unless he would undertake to reside in one of the parishes for which he might be appointed to act, and devote his whole time to the employment, not following any other trade or profession whatsoever.

And whereas at a meeting of the said board of guardians, held on the day of last, was duly appointed a relieving officer for the parishes of [repeat their names] within the said union, and he hath been required to enter into a bond with two sureties to the said guardians in the above-mentioned penalties to be conditioned as hereinafter is mentioned, and he hath requested the above bounden C. D., E. F., and G. H. to join with him as such sureties in the above written bond, subject to the condition hereunder written, to which they have assented, and the said guardians have agreed to accept of them as such sureties accordingly.

NOW THE CONDITION of the above written obligation is such, that if the above bounden shall continue to reside in one of the said parishes for which he shall act as such relieving officer, during the whole period of his continuance in office, and shall during such period devote his whole time to the employment and duties of such office, and shall not follow any trade or profession whatsoever, and shall during the time that he shall hold such office well and truly, and in all respects and particulars observe, fulfil and keep all the lawful orders and directions of the said board of guardians, and likewise all and every the rules, orders and regulations of the said Poor Law Commissioners, which are now or shall from time to time be in force in any of the said several parishes during such his continuance in the said office, so far as the same shall apply or extend to such office, or to any of the duties thereof, and particularly shall at all times provide and keep such books and accounts as shall be required by the said orders and directions of the said guardians, or by the rules, orders and regulations of the said Poor Law Commissioners, or by the superior officer or officers of him the said during his continuance in office, or on his resigning, or being dismissed from the same, or if his executors or administrators after his decease, shall when so required produce and hand over to the said guardians, or such person or persons as they may authorize to receive the same, or to the successor in office of the said such books, accounts and vouchers, and hand over, pay or distribute to and amongst such parties as may be entitled to the same, all and every the balances, monies, matters and things, being the property of any of the said parishes, or of the said guardians in such parishes, or of the said union in respect of the same, and which shall be entrusted from time to time to his care, or be in his custody or possession, in virtue of his said office, and also shall and will well and truly discharge such of the duties of an overseer of the poor, as may be incidental to the said office, and pass his accounts before the auditor or auditors of the said union, or other the person or persons before whom such accounts are required to be passed under and by virtue of the said recited act, or of any other act or acts concerning overseers of the poor, or their accounts, and in all respects well and truly conform thereto, and shall also when required verify such books and accounts and every part thereof on oath, or subscribe a declaration to the truth thereof, in manner provided by the said act, then this obligation shall be void.

Sealed and delivered by the
above bounden

in the presence of

7. Form of Bond
of Collector of
Rates, and his
Sureties.

7. FORM OF BOND OF COLLECTOR OF RATES, AND HIS SURETIES.

KNOW ALL MEN by these presents, that we, C. D. of the parish of in the county of E. F. of and G. H., of are jointly and severally held and firmly bound to the guardians of the poor of the union, in the county of in the sum of pounds of good and lawful money of Great Britain, to be paid to the said or their certain attorney, successors or assigns, for which payment to be well and faithfully made, we bind ourselves jointly, and each of us bindeth himself severally, our and

each and every of our heirs, executors and administrators, and every of them, firmly by these presents, sealed with our several and respective seals.
 Dated this day of in the year one thousand eight hundred and thirty and in the year of the reign of his Majesty King William the Fourth.

7. Form of
 Bond of Col-
 lector of Rates,
 and his Sureties.

WHEREAS, under and by virtue of an order, bearing date the day of one thousand eight hundred and thirty under the seal of the Poor Law Commissioners for England and Wales, acting under the powers and authorities of an act passed in the 4th and 5th years of the reign of his present Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," it was declared that the several parishes of in the county of should be united for the administration of the laws for the relief of the poor, by the name of the union, and that a board of guardians should be elected for such union, and whereas such board of guardians hath been duly elected accordingly. And whereas, by an order under the seal of the said Poor Law Commissioners, bearing date the day of last, it was ordered and directed that the said guardians should appoint a fit and proper person to be the collector of the rates for the relief of the poor of the parishes and places comprised in the said union; and it was by the said order declared that the following should be the duties of such collector, that is to say;—

1. To assist the churchwardens and overseers of the several parishes in making the assessments, and in keeping all books, and in making all returns which relate to the collection of rates or rents, or of any monies whatsoever payable on account of the poor rates.
2. To collect all monies payable on account of the poor rates, or as rents, or arising from any of the sources of income set forth in the order of the said Poor Law Commissioners for keeping the books of receipts and payments.
3. To pay weekly into the hands of the treasurer of the union all monies received on account of the several parishes, as often as he, the collector, should have more than fifty pounds in his hands, but to make no other payment or disbursement whatever on account of the union, or of any parish comprised therein.
4. To institute and to attend to all proceedings against all persons who make default in the payment of monies due by them to any of the parishes in the union, either in respect of poor rates or otherwise.
5. To attend the weekly meetings of the board of guardians, and generally to observe and fulfil all lawful orders and directions of the said board of guardians, and likewise the rules, orders, and regulations relating to the said union already or to be hereafter issued by the Poor Law Commissioners for England and Wales.

And it was thereby further ordered and directed, that the person so to be appointed as aforesaid should, before he entered on the performance of the duties of his office, give such security for the due and proper discharge of the same as should appear to the said guardians to be necessary and fitting. And whereas, at a meeting of the said guardians, held on the day of , was duly appointed a collector for the said union, and he was required by the said guardians to enter into a bond with two proper sureties for the proper discharge of the duties of his office, and he hath requested the above-bounden and to join with him as sureties in the above-written bond, subject to the condition hereunder written, to which they have assented, and the said guardians have agreed to accept of them as such sureties for the said accordingly.

NOW THE CONDITION of the above-written obligation is such, that if the above-bounden shall, during his continuance in the said office of collector, well and truly fulfil the several duties set forth and enjoined in the said order and hereinbefore recited, and also shall, when thereunto required by the said guardians, or by the said Poor Law Commissioners, or as the said guardians or Poor Law Commissioners may direct, render a full, just, and true account of the monies from time to time received and paid by the said as such collector, so that the exact amount collected by him, and the balance, if any, remaining in his hands may clearly appear; and also shall from time to time, and at all times during his continuance in the said office of collector, in all respects and particulars, well and truly observe, fulfil and keep, all the lawful orders and directions of the said board of guardians, and likewise all and every the rules, orders, and regulations of the said Poor Law Commissioners, which are now, or shall from time to time be in force, in any of the said several parishes so far as the same shall apply or extend to his said office, or to any of the duties thereof, and particularly shall provide and keep such books and accounts as are or shall be required by the said orders and directions of the said guardians, or by

7. Form of
Bond of Col-
lector of Rates,
and his Sureties.

the rules, orders, and regulations of the said Poor Law Commissioners, or by the superior officer or officers of him the said and also, when required by the said guardians, or by the said Poor Law Commissioners, during his continuance in office, or on his resigning, or being dismissed from the same, produce and hand over to the said guardians, or to such person or persons as they may appoint, or to the successor in office of the said such books, accounts, and vouchers, and hand over, pay, or distribute, to and amongst such parties as may be entitled to the same, all and every the balances, monies, matters, and things, being the property of any of the said parishes, or of the said guardians in respect of such parishes, or of the respective churchwardens or overseers, or other officers of such parishes, or of the said union, which shall be in his custody or possession, or power in virtue of his said office, or otherwise howsoever, and also shall when required verify such books and accounts, and every part thereof on oath, or subscribe a declaration to the truth thereof in manner provided by the said act, and generally do and shall in all things well and faithfully execute and discharge the duties of his said office; then and in such case the above-written bond or obligation shall be void.

Signed, sealed, and delivered
by the above-bounden

in the presence of

8. Forms relating
to Sale of Parish
Property.

8. FORMS RELATING TO SALE OF PARISH PROPERTY.

Forms to be observed in regard to the Sale of Parish Property, under the Parish Property Act, 5 & 6 Will. 4, c. 69.

- No. 1. Request by the Parish Officers and Inhabitants to the Guardians to apply to the Poor Law Commissioners to consent to Sale.
2. Request by the Guardians to the Poor Law Commissioners to consent to Sale.
3. Order for convening Meeting.
4. Letter to the Parish Officers, accompanying the Order for convening Meeting, and the Forms 5, 6, and 7.
5. Notice of Meeting to consent to the Sale, &c.
6. Resolution to be entered in Vestry Book.
7. Certificate of Minister, Churchwardens and Overseers, of the Forms of the Act having been complied with.
8. Directions for Sale, &c. accompanying Form 9.
9. } Order for Sale.
10. } Conditions of Sale.

Form No. 1.—Request to the Guardians to apply to the Poor Law Commissioners to Consent to Sale.

Parish of
County of Union, }

WE, the undersigned majority of the parish officers, and we the undersigned inhabitants of the parish of request you to apply to the Poor Law Commissioners for England and Wales for their consent to the sale of the under-mentioned premises, belonging to the said parish, and for their directions as to such sale, and for the application of the produce thereof to the permanent advantage of the said parish.

[Here describe the premises, stating whether the tenure is freehold, customary freehold, copyhold, or leasehold, and whether subject to the payment of any quit rent, also when and how the parish became possessed of the property, and if any trusts exists which affect the same, if property built upon waste land, state whether so built with the consent of the lord of the manor, and the date of such consent.]

The said premises cannot conveniently be used for the purposes of the said union, and we are of opinion that the sale thereof will be of permanent advantage to the said parish, for the following reasons:—

[Here describe their condition, whether in a state of good repair, or dilapidated; also in whose occupation, whether in that of paupers or not, or empty; and any other circumstances that may enable the guardians to judge of the desirableness of selling the property.]

8. Sale of
Parish
Property.
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Parish of
County of

Union, }
.

Form No. 3.—Order for Convening Meeting.

To the Churchwardens and Overseers of the Poor of
the above Parish.

WE, the Poor Law Commissioners for England and Wales, in pursuance of a request from the guardians of the poor of the above union, made in pursuance of an application in that behalf from a majority of the parish officers and some of the inhabitants of the above parish, do hereby order you, within twenty-one days from the receipt hereof, duly to give notice of and convene a meeting of the rate-payers of the said parish, and owners of property therein entitled to vote, pursuant to the provisions of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV. intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," for the purpose of obtaining the consent of such meeting to the guardians of the poor of the said union selling the premises described in the margin hereof, under the provisions of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled, "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales."

Given under our hands and seal of office this
day of in the year of our Lord one
thousand eight hundred and thirty-

(L. S.)

Form No. 4.—Letters to the Parish Officers, accompanying the Order
for convening Meeting, &c.

Poor Law Commission Office,
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Parish of
County of

Union, }
.

To the Churchwardens and Overseers of the Poor of the said Parish.

Gentlemen,

By the direction of the Poor Law Commissioners for England and Wales, I transmit to you the following papers relating to the sale of certain premises, the property of your parish, and to which your attention is particularly directed.

They consist of—

Copy of a request for such sale from the Guardians of the Poor of the above Union.

Order to you for convening a Meeting of the Rate-payers and Owners of Property in your Parish to consent to such sale.

A Form of Notice of Meeting, to be used by you, and to be given and affixed in like manner as Vestry Meetings are generally called in your Parish.

A Form of Resolution to be put to the Meeting giving such consent.

And, lastly, A Form of Certificate of the Meeting having been duly held, and the Resolution duly passed, to be signed by the Minister and yourselves, and returned to the Poor Law Commissioners accompanied by attested copies of the Notice of Meeting and Resolution.

With reference to the taking of votes at the meeting, you will be careful that the names of the rate-payers and owners of property, present in person, or (as respects owners) by proxy at such meeting, are duly entered in the vestry book. After the entry of the resolution, in the form herewith sent, you will

2. Rules, &c. of the Poor Law Commissioners.

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divide the page into two parts (or take two pages), one for the entry of votes for the resolution, the other of votes against it; and the votes will be entered thus:—

8. Sale of
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For the above Resolution.			Against the above Resolution.		
Name.	No. of Votes as Owner.	No. of Votes as Rate-payer.	Name.	No. of Votes as Owner.	No. of Votes as Rate-payer.
A. B.	3	..	G. H.	4	..
C. D.	..	1	I. J.	5	..
E. F.	3	2	K. L.	..	4
&c.			&c.		

The amount of the two columns on each side being found, you will ascertain the majority by subtracting the one from the other in the usual way, the chairman having a casting vote in case of equality.

With reference to the owners of property who are entitled to vote, I have to call your attention to the Poor Law Amendment Act, section 40. And you are particularly enjoined to provide a book for the registry of the names of owners of the property, as required by that clause, or you will take care to add the names in the Rate Books, so as to enable the chairman of the meeting to ascertain, by a reference to the register, what owners are entitled to attend in person or by proxy and vote at the meeting.

I have the honour to be,

Gentlemen,

Your obedient Servant,

Secretary.

Form No. 5.—A.—Notice of Meeting to Consent to Sale of Workhouses, &c.

Parish of }
County of Union, }

NOTICE IS HEREBY GIVEN, that a meeting of the rate-payers in this parish, and of the owners of property therein entitled to vote in person, or (as respects owners) by proxy, pursuant to the provisions of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV. intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," will be held at in this parish, on (a) the day of at in the forenoon, for the purpose of giving the consent of such meeting to the guardians of the poor of the said Union selling the following premises, that is to say—

under the provisions of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled, "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations, touching such sale, and the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of the said parish, as the Poor Law Commissioners for England and Wales shall in that behalf direct.

Dated this day of 183 .

Minister.

Churchwardens.

Overseers.

(a) Three clear days' notice is requisite.

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Form No. 6.—B.—Resolution entered in Vestry Book.
Parish of }
County of }
Union, }

[Here describe the premises.]

AT a meeting of the rate-payers of the said parish, and owners of property therein entitled to vote pursuant to the provisions of an act passed in the 4th and 5th years of the reign of his present Majesty King William IV. intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," held at in the said parish, on the day of 183 , pursuant to notice of such meeting duly given: Chairman.

It was resolved, by a majority of such rate-payers and owners, present in person or (as respects owners) by proxy at such meeting:—

That this meeting do consent to the Guardians of the Poor of the said Union selling the premises described in the margin hereof, under the provisions of an act passed in the 5th and 6th years of the reign of his present majesty King William IV. intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations touching such sale, the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the Poor Law Commissioners for England and Wales shall in that behalf direct.

Minister.

} Churchwardens.
} Overseers.

Form No. 7.—Certificate of Minister, Churchwardens, and Overseers, of the Forms of Act having been complied with.

Parish of }
County of }
Union, }

WE, the minister, churchwardens, and overseers of the said parish, do hereby certify, that at a meeting of the rate-payers of the said parish, and owners of property therein whose claims to be entitled to vote have been duly registered in the books of the said parish, held at in the said parish, on the day of , the resolution, of which a true copy is hereunto annexed, was duly passed. And we do further certify and declare, that such meeting was duly convened and held for the purpose expressed in such resolution after public notice of the time and place of holding such meeting, and the purpose for which the same was intended to be held, had been given in like manner as notices of vestry meetings are given in the said parish. And we do further certify, that the paper marked (A.) (a) hereto annexed, and signed by us, is a true copy of the notice of such meeting, and that such notice was given in the church of the said parish on the day of , and that a copy of such notice fairly written (or printed,) was affixed on the day of on the principal door of the church (or chapel) of the said parish, and that the paper hereto annexed, marked (B.) (b) and signed by us, is a true extract from the vestry books of the said parish.

Witness our hands, this day of , 183 .

Minister.

} Churchwardens.
} Overseers.

Form No. 8.—Directions for Sale, &c.

Parish of
County of

Union, }
.

Poor Law Commission Office,
183 .

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Parish
Property.
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To the Guardians of the Poor of the above Union.

Gentlemen,

IN reply to your application dated the day of , touching the sale of certain property of the above parish, I now transmit to you by the direction of the Poor Law Commissioners for England and Wales, the requisite consent of the rate-payers and owners of property in the said parish; and also an order directing you to proceed in such sale in such manner as you may deem most expedient, subject, however, to the conditions of sale therein referred to, among such others as the circumstances of the case may require.

Such additional terms should, of course, protect the parish and yourselves from the burden of legal difficulties and costs, and ensure the benefit of the simplified modes of conveyance suggested by the recent act. On receipt of the draft conveyance, you will forward it to the Poor Law Commissioners for their approbation; but if, on its perusal, or on considering any other papers you may find necessary to submit to them, any professional expenses be incurred, they must be borne by the parish on whose behalf they will be incurred.

With reference to the application of any purchase money, in this or any other instance, or the disposal of any property taken in exchange, such further order for the permanent advantage of the parish or union entitled thereto, shall be hereafter made as the commissioners may see fit: and until such order be issued, the amount must be paid into the hands of the treasurer, and be placed by him to an account intituled "The Guardians of the Poor of the Union, in the matter of the sale of certain Property belonging to the Parish of

I have the honour to be,

Gentlemen,

Your obedient Servant,

Secretary.

Form No. 9.—Order for Sale.

Parish of
County of

Union, }
.

To the Guardians of the Poor of the above Union.

WE, the Poor Law Commissioners for England and Wales, having received a resolution duly passed at a meeting duly convened of rate-payers and owners of property in the above-named parish, entitled to vote, pursuant to the provisions of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV. intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," do hereby order you the Guardians of the Union, in the county of , within thirty days from the receipt hereof, to proceed to the sale of the premises described in the margin hereof, under the provisions of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner as you the said Guardians may deem expedient, subject nevertheless to the conditions of sale hereunto annexed, and to such other conditions as the circumstances of the case may appear to you to require. And we do hereby further order that the purchase monies to arise from such sale shall, after

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Property.
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the payment of the expenses incidental thereto, such expenses to be allowed by you, be paid into the hands of the treasurer of the said union, and be placed to the credit of the guardians of the said union, to an account to be intituled "The Guardians of the Union, in the matter of the sale of certain Premises belonging to the Parish of _____," and that the said purchase monies shall be applied to such purposes, and in such manner as we shall by any order under our hands and seal of office direct.

Given under our hands and seal of office, this
day of _____ in the year of our Lord
one thousand eight hundred and thirty-
(L. S.)

Form No. 10.—Conditions of Sale.

1. In case any purchaser shall be desirous of investigating the title, an abstract shall be prepared and furnished at his cost, and all expenses attending such investigation, or arising out of the same, or of completing the title, and the costs of procuring or making all official and other copies, or extracts, counterparts or duplicates of deeds, wills, or other documents, and of preparing, perusing, and approving deeds of covenant, and the like, shall be paid by the purchaser to the vendors previously to or as the same shall be incurred, and the purchaser shall not be entitled to require any further investigation or evidence, while any previous expenses of or connected with the investigation of the title or the evidence shall remain unsatisfied; nor shall the purchaser have any claim whatever for reimbursement, or be entitled to refuse or delay payment in respect of any expenses incurred in case the purchase shall not be completed; and the vendors shall not be required to do any act for completing the sale beyond obtaining the approbation by the Poor Law Commissioners and guardians of the draft of conveyance, and the affixing of their respective seals to the conveyance when approved. But unless the purchaser shall, by writing under his hand or the hand of his solicitor, call for such abstract and state his intention of investigating the title within seven days from the day of sale, he shall be deemed to have waived his right to do so; and notwithstanding such abstract being called for, the purchaser shall be deemed to be satisfied with the title of the vendors, unless he shall have delivered to the vendors his objections to the title or requisition for completing the same, in writing, within fourteen days from the delivery of such abstract.

2. The purchase money shall be paid to _____ the treasurer of the union, and the conveyance executed on or before the _____ day of _____, and the purchaser, on the payment of the purchase money and the execution of such conveyance, shall be let into possession or become entitled to the receipt of the rents and profits, and the purchaser shall accept the receipt of such treasurer as a sufficient discharge.

3. In case the completion of the purchase shall from any reason whatever be delayed beyond the _____ day of _____, the purchaser shall pay to the vendors interest after the rate of 5l. per cent. per annum on the amount of his purchase money unpaid, and shall not be entitled to any compensation on any pretext for his purchase money, or any part thereof, having been unproductive.

4. The seal of office of the Poor Law Commissioners for England and Wales affixed to any document shall be conclusive evidence as to all the facts therein stated or noticed, and as to the powers of the vendors as guardians of the union.

5. In case of sale or exchange, no other covenant shall be required of the conveying parties, except one, that they have done no act to incumber the property disposed of.

6. If the purchaser shall neglect or fail to comply with the above stipulations, or any of them, or any part thereof, the deposit paid by him and all other payment previously made by or due from the purchaser, under or in respect of the sale or of these conditions, shall be absolutely forfeited to the vendors, and they shall be at full liberty to resell the property either by public auction or private contract, on such conditions of sale and in such manner as they shall think fit; and the deficiency (if any) occasioned by such second sale, together with all expenses attending the same, shall immediately after the same sale be made good to the vendors by the said purchaser at this sale, and in case of the non-payment of the same, the whole thereof shall be recoverable by the vendors as and for liquidated damages, and it shall not be necessary to previously tender a conveyance to the purchaser.

III. APPENDIX OF FORMS.

I. Forms relating to Overseers, &c. &c.

[See Context, ante, Page 26.]

County of } To E. F., gentleman, High Constable of the hundred of
Middlesex } within the said county [or "within the division of in the
to wit. } said county. 1. Forms relat-
ing to Over-
seers, &c.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of Middlesex, one whereof is of the quorum, do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said hundred, [or, "division,"] in the form or to the effect, according as upon this our warrant is indorsed [or, "hereunder written."]

Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

[See Context, ante, Page 26.]

County of }
Middlesex, } To the Constable of the parish of in the county of Middlesex. 2. The high con-
Hundred of } stable's warrant
to the petty con-
stable.

By virtue of a precept from A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of (one whereof was and is of the quorum,) to me directed, you are hereby required, immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices, and others his said Majesty's justices of the peace for the said county, at a special sessions to be holden at in in the said county, on the day of (a), at the hour of in the forenoon of the same day, to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And you are hereby also required to give notice to all justices of the peace, for the said county, residing in your constablewick, of the time and place appointed for holding the said special sessions. And be you then and there to certify what you shall have done in the premises. Herein fail you not.

Given under my hand the day of in the year of our Lord one thousand eight hundred and thirty-one.

E. F., High Constable.

The inhabitants of this parish [or township] are requested to meet in public vestry, at the vestry-room on the day of next, at o'clock in the noon, to make out a list of persons fit and proper to serve the office of overseers of the poor for the year ensuing, to be returned to the justices of the peace for the division of [or as the case may be.] 3. Notice of holding a vestry for nomination of overseers.

(a) By 54 Geo. III. c. 91, this must be within fourteen days after 25th March in each year, ante, 24.

1. Forms relating to Overseers, &c.

4. The return or nomination to be made by the vestry to the magistrates.

At a public vestry, duly held in and for the parish of _____ in the county of _____ pursuant to notice on the _____ day of _____ in the _____ year of our Lord one thousand eight hundred and thirty-one, the following persons, whose names are subscribed, are returned to his Majesty's justices of the peace, acting in and for the hundred [or division] of _____ in the said county of _____ as substantial householders within the said parish, and meet and fit and proper persons to serve the office of overseers of the poor of the said parish [or township, hamlet, or precinct] of _____ in the said county of _____ for the year ensuing.

A. B.	}	Churchwardens.
C. D.		
E. F. G. H.	}	Overseers.
I. K. L. M.		
N. O. P. Q.,	}	Inhabitants.
&c.		

Names of persons above referred to.

R. S.

T. U., &c. &c.

5. The nomination by the vestry to the magistrates of non-resident persons to be overseers, under 59 Geo. III. c. 12, s. 6, ante, 23.

At a public vestry, duly held in and for the parish of _____ in the county of _____ pursuant to notice on the _____ day of _____ in the _____ year of our Lord one thousand eight hundred and thirty-one, the following persons are nominated and returned to his Majesty's justices of the peace, acting in and for the hundred [or division] of _____ in the said county, as being assessed to the relief of the poor of the said parish, and being resident in the parish of _____ in the said county, within two miles from the church of the said parish of _____ [or where there is no church or chapel "resident within one mile from the boundary of the said parish"] and as being meet, fit, and proper persons to serve the office of overseers of the poor of the said parish for the present year, and who have respectively consented to be appointed to serve as such overseers.

A. B.	}	Churchwardens.
C. D.		
E. F. G. H.	}	Overseers.
I. K. L. M.		
N. O. P.	}	Inhabitants.
Q. &c.		

Names of persons above referred to.

R. S., resident as above.

T. U., resident as above.

Ante, p. 26.

6. Usual appointment of overseers for a parish, township, &c., p. 26.

County of _____ to wit. } We, A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the county of _____ (one whereof is of the quorum,) do hereby nominate and appoint E. F. and G. H., being substantial householders of and in the parish [township, or precinct] of _____ in the said county,* to be overseers of the poor of the said parish, [township, or precinct,] together with the churchwardens thereof, for the present year, according to the directions of the statute [or if a township, "the statutes,"] in that case made and provided.

Given under our hands and seals this _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one

A. B. (L. S.)
C. D. (L. S.)

This appointment must be signed, sealed, and delivered, either on, or within fourteen days after, the twenty-fifth day of March.

Ante, p. 23.

7. Appointment, where one of the overseers is a non-resident, under 59 Geo.

If one is resident, and one non-resident, then follow the former precedent to "overseer of the poor," and continue:—

We, the said justices being duly assembled at a special sessions for the appointment of the overseers of the poor, do also, upon the nomination and at the

request of the inhabitants of the said parish in vestry duly assembled, appoint G. H. duly assessed to the relief of the poor of the said parish, and who is a householder resident in the parish of within two miles from the church (b) of the said parish of and who hath consented to this appointment, to be one of the overseers of the poor of the said parish of together with the said E. F. and the churchwardens thereof for the present year, according to the statutes in that case made and provided. 1. Forms relating to Overseers, &c. III. c. 12, s. 6, 7, ante (a).

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-one. A. B. (L. S.) C. D. (L. S.)

Ante, p. 32.

Suffolk. } To His Majesty's Justices of the Peace acting in and for the said county of Suffolk, and to each and every of them. 8. Form of nomination, by vestry, of an assistant overseer, under 59 Geo. III. c. 12, s. 7.

We, the undersigned inhabitants of the parish of in the said county of Suffolk, in vestry assembled in the said parish, pursuant to legal notice for that purpose given, do hereby declare that we have this day nominated and elected E. F., of in the said county a discreet person, in our opinion, to be assistant overseer of the poor of the said parish, and did determine and specify that he should execute and perform the following duties relating to the office of overseer, (that is to say,) [specify duties fixed by vestry; if he is to discharge all the duties of an overseer, say "all the duties."]

And that we have fixed the yearly sum of as and for the yearly salary of the said for the execution of his said office, to be paid quarterly out of the money to be raised for the relief of the poor of the said parish of Given under our hands, this day of

A. D. 18 A. B. C. D. &c.

Ante, p. 33.

Know all men by these presents, that we, A. B., of in the county of yeoman, and C. D., of the same place, yeoman, are jointly and severally held and firmly bound to G. H., and I. K., the churchwardens, and L. M. and N. O., the overseers of the poor of the said parish of in the sum of of good and lawful money of Great Britain, to be paid to the said churchwardens and overseers, and their successors for the time being: for which payment to be well and faithfully made we bind ourselves and each of us, our heirs, executors, and administrators, and each and every of them, and for ever by these presents sealed with our seals. Dated the day of in the year of the reign, &c. 9. Bond from assistant overseer, under the 59 Geo. III. c. 12, s. 7.

Whereas the above bounden A. B. hath been duly nominated, elected, and appointed assistant overseer of the parish of under and by virtue of the powers of an act of parliament passed in the 59 Geo. III. entitled "an Act to amend the laws relating to the poor:" and the above bounden C. D., hath agreed to be bound with him for the due execution of the said office, in manner as hereinafter mentioned. Now, therefore, the condition of the above-written obligation is such, that if the above bounden A. B. shall, from time to time, and at all times during the continuance of his said appointment, or of any future appointment or appointments, [reciting the words of the appointment, well and faithfully collect, and get in all such rates and other sums of money as he may be directed to demand and obtain, by virtue of his said office, and expend the same under the direction of the select vestry, when received by him for and towards the relief of Condition thereof.

(a) The 59 Geo. III. c. 12, s. 6, declares that it shall suffice, to describe the person appointed by his name and residence, ante, 23, so that it is not absolutely necessary to state that he is assessed, &c. (b) If no church within one mile of the boundary of the said parish.

1. *Forms relating to Overseers, &c.* the poor of the said parish, according to the directions of the said act, or of any other act or acts of parliament therein referred, and do from time to time, and at all times when required by said select vestry, render a just and true account or accounts of all monies received or expended by him to the person or persons duly authorised to receive the same:] and do also faithfully and diligently execute his said office of assistant overseer in every other respect, according to the several directions, provisoes, and regulations of the said recited act, or any other law or laws relating to the poor therein referred to, or since passed or enacted. [Insert any other conditions required by the select vestry.] Then the within written obligation shall be void, or else shall be and remain absolute (a).

Ante, p. 32.

10. Form of the appointment of an assistant overseer, by two justices.

County of } Whereas the inhabitants of the parish of _____ in
to wit. } the county of _____ in vestry assembled, in the said parish,
and elect } on the _____ day of _____ last past, did nominate
of [his addition] to be an assistant overseer of the poor of
the said parish, and did determine and specify that he should [the
particular duties specified by the inhabitants to be performed by the assistant overseer, as the collection of rates, &c. (see condition of bond, ante, 777;) if he is to perform the general duties of an overseer, say,] execute and perform all the duties of the office of an overseer of the poor of the said parish, and did fix the yearly sum of _____ as and for the yearly salary of the said _____ for the execution of his said office: now we, two of his Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said _____ to be an assistant overseer of the poor of the said parish; and we do hereby authorise and empower him to execute and perform the said duties until he shall resign his said office, or until his appointment shall be revoked by the inhabitants of the said parish in vestry assembled, and to receive the said salary so as aforesaid fixed by the said inhabitants in their said vestry.

Given under our hands and seals, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

A. B. (L. S.)
C. D. (L. S.)

Ante, p. 28, 30.

11. Mandamus to justices to appoint overseers of the poor.

William the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To the Keepers of our Peace, and our Justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our county of _____ and to every of them, greeting.

Whereas, we have been informed in our court before us, upon the complaint of divers of the inhabitants of the parish of _____ in our said county of _____ that for divers years last past there have been, or ought to have been, and still, of right, ought to be, four, three, or two substantial householders (inhabiting within the parish aforesaid) nominated and appointed, yearly, and every year, under the hands and seals of two or more of you, the said keepers of our peace and justices, one whereof being of the quorum, to be overseers of the poor for the whole parish of _____ And, whereas, we have further been given to understand, in our court before us, that application hath been made to you, the said keepers of our peace, and justices assigned, as aforesaid, to nominate and appoint four, three, or two, substantial householders of the parish aforesaid, to be overseers of the poor for the whole parish aforesaid, for the present year; but that you, the said keepers of our peace, and justices assigned, as aforesaid, have wholly neglected and refused to nominate and appoint such overseers of the poor, as aforesaid, for the whole parish aforesaid, and that no such nomination and appointment of overseers of the poor, for the whole parish aforesaid, for this present year, hath been at any time made, in contempt of us, and to the great

(a) It is optional with the parish to require a security.

damage and prejudice of the inhabitants of the parish aforesaid, and to the oppression of the poor thereof; we, therefore, being willing that due and speedy justice should be done in this behalf, as it is reasonable, do command you, the said keepers of our peace, and justices assigned, as aforesaid, and every of you, firmly enjoining you, that you, immediately after the receipt of this our writ, you, or two of you, one whereof to be of the quorum, do, without delay, nominate and appoint four, three, or two substantial householders, inhabiting within the parish aforesaid, to be overseers of the poor for the whole parish of aforesaid, for the remainder of the present year, or that you show us cause to the contrary thereof, lest, by your default, the same complaint should be repeated to us; and how you shall have executed this our writ make known to us at Westminster, on Tuesday next after the morrow of All Souls, then returning to us this our said writ, and this you are not to omit. Witness, Thomas Lord Denman, at Westminster, the twenty-eighth day of June, in the sixth year of our reign.

By Rule of Court.

By the Court,

LUSHINGTON.

Ante, p. 29.

To the Churchwardens and Overseers of the Poor of the parish of _____ in the county of _____ and to A. B. and C. D., Esquires, acting as (b) Justices of the Peace in and for the said county.

I do hereby give you notice that I intend to and shall appeal at the next general quarter sessions of the peace, to be holden at _____ in and for the county of _____ against a certain nomination and appointment made by you, the said A. B. and C. D., on the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one, of me, the undersigned E. F., to be one of the overseers of the poor of the said parish for the present year: and I further give you, and each and every of you, notice, that the grounds of my said appeal are as follows, that is to say, that, &c. [here state the grounds of appeal.] (c)

Dated this _____ day of _____ in the year above mentioned.

E. F.

II. Forms of Proceedings to recover Possession of Parish Houses or Lands, on stat. 59 Geo. III. c. 12, s. 24, 25. (d)

Ante, p. 260.

To A. O. of the Parish of _____ in the County of _____

Under and by virtue of the provisions of an act passed in the 59th year of King George the Third, intituled "An act to amend the laws for the relief of the poor," we hereby give you notice to quit the parish [or town] house [or other tenement or dwelling,] belonging to [or provided by or at the charge of] the parish of _____ in the county of _____ for the habitation of the poor thereof, which you have been permitted to occupy in the said parish, [or as the case may be, as, into which you have unlawfully intruded yourself,] situated at _____ in the said

13. Notice to quit, to be given by overseers of the poor, in order to recover possession of parish houses or lands; "to be delivered to the person in possession, or, in his absence, af-

(a) See 43 Eliz. c. 2, s. 6; 17 Geo. II. c. 38, s. 4. It is advisable to serve each of the magistrates and each of the parish officers with a copy of this notice. (See 15 East, 207, 1 B. & Ald. 210.)

(b) If described as being justices, that precludes the appellant from disputing their authority, ante, 29.

(c) The 43 Eliz. c. 2, s. 6, does not require the notice of appeal to state the grounds; and the 41 Geo. III. c. 23,

s. 4, (ante, 219,) does not, it seems, extend to notices of appeal against an appointment of an overseer, although it uses the comprehensive words "any act done by the justices." As the law therefore is doubtful, it would be discreet in an appellant to state the grounds of his appeal, &c.

(d) In some former editions of this work, these forms are described as forms "prescribed in a schedule to the act," but that was a mistake.

2. Forms relat- parish, [or parish of in the county of as the case may be,] and de-
ing to recover liver up the possession thereof to us, the churchwardens and overseers of the
possession of poor of the said parish of within one month after this notice and demand
Parish houses, in writing for that purpose.

&c. Dated on day, the A. B. }
day of in the year of C. D. } Churchwardens. { or the
fixed on some our Lord one thousand eight E. F. } Overseers of the Poor. { major
notorious part of hundred and G. H. } part of
the premises." them.

[A duplicate or copy of this notice should be made and kept by the person who is to prove the service of it.]

14. Information of an overseer of the poor against a person for refusing to quit possession within one month after the foregoing notice and demand. County of } The information and complaint of O. P., one of the overseers of the
_____ } poor for the parish of in the said county, made on oath before
me, J. P. esquire, one (a) [or J. P. and K. P. esquires, two] of his Majesty's
justices of the peace in and for the said county, the day of in the year
of our Lord one thousand eight hundred and who says that A. O., a poor
person residing in the parish of in the said county, having been permitted
to occupy [or, having unlawfully intruded himself into] a parish [or town]
house [or tenement, or dwelling] belonging to [or provided by, or at the charge
of] the said parish of situated at in the said parish, [or in the parish
of in the county of as the case may be] has refused [or neglected] to
quit the same and deliver up the possession thereof to the churchwardens and
overseers of the poor of the said parish of within one month after notice and
demand in writing for that purpose signed by the said [or major part of the]
churchwardens and overseers of the poor, and delivered to him personally: [or in
his absence affixed on the door or some other notorious part of the said premises:]
The said complainant therefore prays such redress in the premises as to law does
appertain. O. P. Overseer of the Poor.

Before me, [or us.]

Ante, p. 260.

(C.) Summons thereupon.

["To be delivered to the party, or in his absence to be affixed on the premises, seven days at the least before the time appointed for hearing of the complaint."]

County of } To A. O., of the parish of in the said county of [or, as
_____ } the case may be.]

15. Summons thereon.

Whereas O. P., one of the overseers of the poor of the parish of in the
said county, has this day preferred an information and complaint upon oath
against you, before me, J. P. esquire, one [or us, J. P. and K. P. esquires, two]
of his Majesty's justices of the peace in and for the said county, for that you the
said A. O. being a poor person residing in the aforesaid parish of and
having been permitted to occupy [or, having unlawfully intruded yourself into]
a parish [or town] house [or tenement, or dwelling,] belonging to [or provided
by, or at the charge of,] the said parish of situated at in the said
parish, [or in the parish of in the county of as the case may be]
have refused [or neglected] to quit the same and deliver up the possession thereof
to the churchwardens and overseers of the poor of the said parish of within
one month after notice and demand in writing for that purpose, signed by the
said [or, major part of the] churchwardens and overseers of the poor, and de-
livered to you personally: [or, in your absence affixed on the door, or some other
notorious part of the said premises:]

These are therefore to require you personally to appear before me [or us] and
such others of his Majesty's justices of the peace for the said county as shall be
present at the in in the said county of on the day of
next, at o'clock in the forenoon, then and there to answer the
premises. Herein fail not. Given under my hand and seal [or our hands and

(a) By 3 Geo. IV. c. 23, s. 2, one formation, and issue the summons. See
justice is competent to receive the in- title, "Conbiction," Vol. I.

seals] the day of in the year of our Lord one thousand eight hundred and

2. Forms relating to recover possession of Parish houses, &c.

N.B. A copy should be taken of the summons, or what is better, a duplicate granted, so that a proper return of service may be made and regularly proved on oath.

Ante, p. 260.

(D.) Warrant thereon, to cause Possession to be given.

County of } To the chief constable of the hundred of to the petty con- 16. Warrant
 _____ } stables of the parish of in the said hundred and county, and thereon.
 to each and every of them.

Whereas O. P., one of the overseers of the poor of the parish of in the said county, did, on the day of last, prefer an information and complaint upon oath before us, J. P. and K. P. esquires, two [or me, J. P. esquire, one, according to stat. 3 Geo. IV. c. 23, s. 2,] of his Majesty's justices of the peace in and for the said county, against A. O., a poor person residing in the said parish of for that he the said A. O. having been permitted to occupy [or having unlawfully intruded himself into] a parish [or town] house [or tenement, or dwelling] belonging to [or provided by, or at the charge of,] the said parish of situated at in the said parish of [or in the parish of in the county of as the case may be,] had refused [or neglected] to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of within one month after notice and demand in writing for that purpose, signed by the said [or, major part of the] churchwardens and overseers of the poor, and delivered to him the said A. O., personally; [or, in the absence of the said A. O., affixed on the door, or some other notorious part of the said premises:] And whereas, upon the appearance of the said A. O. this day before us, in pursuance of a summons for that purpose, [or, And whereas on the day of last, a summons was duly issued to require the said A. O. to appear before us this day at in the said county, to answer unto the said complaint, and it appears to us, J. P. and K. P. esquires, two of his Majesty's justices of the peace for the said county, upon the oath of A. C. constable of the parish of aforesaid, that he the said A. C. did duly deliver the said summons to the said A. O., on the day of instant: [or that he the said A. C. did use his best endeavours to deliver the said summons to the said A. O., and that in the absence of the said A. O. he the said A. C. did affix, or cause to be affixed, the said summons on the door of the said house or premises (as the case may be,) seven days at the least before the time appointed for hearing the said complaint, but that he the said A. O. has neglected to appear according to the said summons;] we the said justices have proceeded to hear and determine the matter of the said complaint, and do find and adjudge the same to be true: we do therefore charge and command you that you without delay go to and cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the said parish of or some or one of them, pursuant to and in compliance with the directions of an act passed in the fifty-ninth year of the reign of King George the Third, intituled, "An act to amend the laws for the relief of the poor." Herein fail not. Given under our hands and seals at in the said county of the day of in the year of our Lord one thousand eight hundred and

J. P.
K. P.

N.B. These forms, with a little variation, may be adapted to the 25th sect. of the same act, which empowers the overseers to recover lands taken for the employment of the poor, and let to them, on which any person unlawfully may enter thereon.

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III. Forms relating to Poor Rates.

17. Certificate of guardians of the poor to magistrates of Bury, under local act, of the rate necessary to be made for the use of the poor of the parish of Bury St. Edmund's (a). To the Worshipful the Aldermen and Justices of the peace, of the burgh of Bury St. Edmund's, in the county of Suffolk.

Whereas by virtue of an act of parliament, made in the twenty-first year of the reign of his late Majesty, King George the Second, intituled, "An Act for erecting workhouses, for the better employing and maintaining the poor, within the burgh of Bury Saint Edmund's, in the county of Suffolk, and for the better repairing and paving the streets and highways there," the corporation and guardians of the poor, of the said burgh of Bury Saint Edmund's, have, at their court or assembly, this day held at the Guildhall of the said burgh, set down and ascertained the sum of _____ pounds needful for the maintenance and employment of the poor within the care of the said corporation, for three calendar months from the date hereof; we, the guardians of the poor of the said burgh, pursuant to the power given us by the said act, and by authority of the same, do hereby certify unto you, the said aldermen and justices of the peace for the said burgh, that the sum needful for the maintenance and employment of the poor, within the care of the said corporation, for three calendar months from the date hereof, is so set down and ascertained by us, at _____ pounds; and that we have ordered and directed that the same shall be raised and paid, without delay, by the respective parishes of Saint Mary and Saint James, within the said burgh, in such proportions, parts and shares, as are hereinafter mentioned; that is to say, the sum of _____ pounds by the said parish of Saint Mary and the sum of _____ pounds by the said parish of Saint James.

And also that we have appointed the churchwardens and overseers of the poor of the said parish of Saint Mary, to be assessors and collectors of the said sum of _____ pounds for the said parish of Saint Mary.

And also have appointed the churchwardens and overseers of the poor of the said parish of Saint James, to be assessors and collectors of the said sum of _____ pounds for the said parish of Saint James.

In witness whereof we have hereunto affixed our common seal, the _____ day of _____ in the year of our Lord one thousand eight hundred and _____

18. Justices' order thereupon to the churchwardens and overseers to make rate accordingly (b).

Borough of Bury St. Edmund's in the county of Suffolk. } To the Churchwardens and Overseers of the Poor of the parish of Saint James, in the said borough; and to collector, &c.

Whereas, in pursuance of an act of parliament made in the twenty-first year of the reign of his late Majesty, King George the Second, intituled, "An Act for erecting workhouses, for the better employing and maintaining the poor, within the burgh of Bury Saint Edmund's, in the county of Suffolk, and for the better repairing and paving the streets and highways there," the guardians of the poor of the said borough of Bury Saint Edmund's have, upon the _____ day of _____ by writing under their common seal, certified to the aldermen and justices of the peace for the said borough, that they the said guardians, have set down and ascertained the sum needful for the maintenance and employment of the poor within their care, for three calendar months from the date thereof, at the sum of _____ and have ordered and directed that the same shall be raised and paid, without delay, by the respective parishes of Saint Mary and Saint James, within the said borough, in such proportions, parts and shares, as are therein mentioned; and that the sum of _____ is the proportion, part, and share, set on your said parish of Saint James. We, therefore, whose hands and seals are hereunto set, being two of his Majesty's justices of the peace of and for the said borough, according to the power and authority given us in and

(a) This and the next form are founded on a local act of parliament. In general the churchwardens and overseers make the rate without the inter-

vention of any third person, either guardian of the poor, &c., or magistrates.

(b) See note to the last precedent.

by the said act, do hereby authorise and require you, the said churchwardens and overseers, to rate and assess the said sum of _____ on all and every the inhabitants, and occupiers of lands, houses, tenements, tithes impropriate, appropriation of tithes, and hereditaments, within your said parish of Saint James; and the money so rated and assessed, to demand, gather, and receive, and for non-payment thereof, being first lawfully demanded, to apply to us, the said justices, to issue our warrant to levy the same by distress and sale of the goods of such person and persons who are so assessed and rated, and ought to pay the same sums, and refuse or neglect to pay the same; and all such monies, as you shall receive as aforesaid, you are to pay unto the treasurer for the time being, appointed to receive the same by virtue of the said act.

Given under our hands and seals, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

The churchwardens and overseers of the poor of this parish of _____ do hereby give this public notice that they will meet in the vestry-room [or "committee-room"] of this parish, at _____ o'clock in the afternoon of the day of _____ next, to make a rate for the relief of the poor of the said parish, _____

19. Public notice in church of intention to make a poor rate (a).

Title of Rate.

Ante, p. 206.

"A rate or assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned, relating to the poor for the parish [township or precinct] of _____ in the county of _____ made and assessed, by us, whose names are hereunder written, being churchwardens and overseers of the poor of the said parish, this _____ day of _____ one thousand eight hundred and _____ being the first [second, or third, as it may be,] rate or assessment of [one shilling, or as the fact is,] in the pound for the present year."

20. Title of a rate for the relief of poor (b).

Ante, p. 207.

Notice is hereby given, that a rate of [one shilling] in the pound, was, on last, the _____ day of _____ instant, made by the churchwardens and overseers of the poor of the parish of _____ in the county of _____ for the relief of the poor of the said parish, for the half year commencing [or as the case is,] and the said rate was, on the _____ day of _____ duly allowed (d) by A. B. and C. D., esquires, two of his Majesty's justices of the peace of, and acting in and for the division [county or hundred] of _____ in the said county of _____ pursuant to the statute in that case made and provided.

21. Notice of publication of a rate in the parish church, according to 17 Geo. II. c. 3, s. 1, (c).

L. M. }
N. O. } Churchwardens.

Whereas a rate or assessment, for the relief of the poor in and for the parish of _____ in the county of _____ was made [or "published"] on the day of _____ last past: And whereas I am [or "A. B. of _____ is"] an

22. Demand of inspection of rate, and of a copy thereof, under stat. 17 Geo. II. c. 3, s. 2 (e).

(a) This notice is not absolutely essential, but it is strongly recommended in practice, because it invites every parishioner to attend and object to the proposed rate in the first instance; and upon suggestion, when reasonable, the parish officers ought to frame the rate accordingly; thus much hostility and expense of litigation may be avoided.

(b) See form, ante, 206: quære now if the form should not be altered by omitting one of the three columns relating to the value or amount of pro-

perty assessed, as the 6 & 7 Will. IV. requires all property to be assessed at its actual value.

(c) See the act and cases, ante, 208. This notice must be read in the church by the minister, on the Sunday next following the allowance of the rate by the justices.

(d) It need not state that the rate has been allowed. (*Bennett v. Edwards*, 7 B. & C. 516.) See next form.

(e) See this statute and cases, ante, 209 to 214.

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inhabitant of the said parish: Now, therefore, I do hereby demand and require of you, the churchwardens and overseers of the poor of the said parish, and each and every of you, permission to inspect the said rate at the hour of on next, or at any other seasonable time you may appoint, within days from the date hereof; and I hereby tender and offer to pay you one shilling for the same: And I hereby demand and require you forthwith to give me, so being such inhabitant as aforesaid, a copy of the said rate, and I am ready and willing, and hereby tender and offer, to pay for such copy at the rate of sixpence for every twenty-four names contained therein. Dated this day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B.

An inhabitant of the said parish.

To the churchwardens and overseers of the poor of the said parish, and all other persons authorised in the said parish, according to the statute 17 Geo. II. c. 3.

23. Declaration
for the twenty
pounds' penalty
for not permit-
ting inspection
or giving copy
of a rate.

[See the precedents, 2 *Chitty on Pleading*, 5 *Ed.* 504, 6 *Ed.* 328; and notes, 3 *B. & C.* 658; 5 *D. & R.* 572; 7 *B. & C.* 586; 6 *Bing.* 230; 3 *Young & Jarvis*, 458.]

24. Notice of
appeal against
poor rates made
under local acts,
and directed to
churchwardens
and overseers,
and several pri-
vate individuals.

To the Churchwardens and Overseers of the Poor, and Vestry-men, of the parishes of Saint Margaret and Saint John the Evangelist; and to Messrs. A. B. and C. D.; Messrs. John Elliott, Esq., and Company, J. Goding, &c. [Here a great many persons were named.]

I do hereby, on the part and behalf of the Gas Light and Coke Company, and as their attorney, give you notice, that they intend at the next general quarter sessions of the peace to be holden at the Guildhall, in and for the city of Westminster and liberties thereof, on Thursday the twenty-first day of October, instant, to enter and prosecute an appeal against a rate or assessment, purporting to be made on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and thirty, pursuant to the directions of an act of parliament, made and passed in the twenty-fifth year of the reign of his late Majesty George the Second, intituled "An act for the better relief and employment of the poor in the parishes of Saint Margaret and Saint John the Evangelist, in the city of Westminster; and for cleansing the streets and repairing the highways within the said parishes," and purporting to be an equal pound rate or assessment, for the relief of the poor, repair of the highways, and cleansing the streets in the said parishes of Saint Margaret and Saint John the Evangelist, in the city of Westminster, upon all and every the person and persons who inhabit, hold, occupy, or enjoy any land, house, shop, wharf, warehouse, or other building within the said parishes, or either of them, or any other person or persons who by law are chargeable and assessable for and towards the relief of the poor within the said parishes, pursuant to the before-mentioned act. And, whereas, the said Gas Light and Coke Company, in and by the said rate or assessment, are rated as occupiers in the following form.

The Gas Light and Coke Company for land, house, warehouses, and buildings, situate in the Horseferry Road, in the said parish of Saint John the Evangelist, and the mains or pipes and other apparatus for the conveyance of gas belonging to the said company, situate being and fixed in the ground in the said parishes of Saint Margaret and Saint John the Evangelist, at the annual value of five hundred pounds, each instalment two hundred and fifty pounds.

And, whereas, the said Gas Light and Coke Company, in pursuance of the provisions of the above-mentioned statute, paid the said rate or assessment of twenty-five pounds, on the twenty-first day of July, in the year of our Lord one thousand eight hundred and thirty, to the person duly authorised to receive the same: I, as the attorney of the said Gas Light and Coke Company, do further give you and each of you notice on their behalf, that they find themselves aggrieved by the said rate or assessment, and that the grounds and causes of their appeal are,—

1st. That there is no SEPARATE assessment upon the land, house, warehouses, and buildings, situate in the Horseferry Road, distinct from the assessment on the said mains or pipes and other apparatus, so that they are unable to ascertain on what sum they are assessed for the said land, house, warehouses, and buildings, and on what sums they are assessed for the said mains or pipes, and other apparatus.

2nd. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus, as being fixed in the ground in the said parishes of Saint Margaret and Saint John the Evangelist, inasmuch as they have no title or interest to, or in the said ground, otherwise than the privilege of laying their mains or pipes and other apparatus under the surface thereof.

3d. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus in the conveyance of gas, inasmuch as the said mains or pipes and other apparatus form part of their stock in trade, and the said Gas Light and Coke Company are not resident inhabitants of the said parishes of Saint Margaret and Saint John the Evangelist, or either of them.

4th. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus, inasmuch as the said mains or pipes and other apparatus forming part of their stock in trade, they are rated for their stock in trade, and not for the profits arising therefrom.

5th. And further, that if the said rate or assessment of five thousand pounds is meant to be an assessment upon the value of the said land, house, warehouses, and buildings, and upon the profits arising from the said mains or pipes, and other apparatus for the conveyance of Gas, the said sum of five thousand pounds greatly exceeds the fair annual value of the same.

6th. And further, that if the said rate or assessment of five thousand pounds is meant to be an assessment upon the value of the said land, house, warehouses, and buildings, and in respect of the occupation of land by the said Company, by their said mains, pipes, and other apparatus for the conveyance of Gas, and also from the profits arising from the said mains, pipes, and other apparatus for the conveyance of Gas, the said sum of five thousand pounds—greatly exceeds the fair annual value of the said land, house, warehouses, and buildings, and the occupation of the said land by the said company, by the said mains, pipes, and other apparatus for the conveyance of Gas, and the annual amount of the said profits added together.

7th. And further, that the said rate or assessment of five thousand pounds, greatly exceeds the annual value of the said land, house, warehouses, and buildings, and of the said mains or pipes, and other apparatus.

8th. And further, that the inhabitants of the said several parishes of Saint Margaret and Saint John the Evangelist, exercising trades, businesses and other concerns, in the said parishes, and having stock in trade in the said parishes, and who derive a profit from such their several trades, businesses, and concerns, these are not rated and assessed in the said rate for and in respect of the profits of such their said trades, businesses, and concerns, and upon their several stocks in trade there.

9th. And further, that the following inhabitants of the said parishes of Saint Margaret and Saint John the Evangelist, are not rated and assessed in the said rate, for the profits of their trades, businesses, and concerns, carried on in the said parishes, and upon their several stocks in trade there, [that is to say] Messrs. Seager, Evans and Stafford, distillers, are rated in the said rate for their house and distillery, in the said parish of Saint John the Evangelist, of two hundred and fifty pounds, but are not rated in the said rate, for and in respect of the profits made in their business or concerns of distillers, nor for their machinery, utensils, and other apparatus, nor for their stock in trade of their distillery, in the said parishes. J. Elliott, Esq. & Company, brewers, are rated in the said rate for their house, &c., [here the same description was repeated as to Seager & Co.] and as to a great many other firms and individuals, in the terms stated respecting Messrs. Seager & Co., showing in substance that they were rated in respect of their buildings, but not in respect of their profits in trade.

Then followed a numerous list of tradesmen and manufacturers, who alleged as objections to the rate, they were not rated in respect of their implements of trade, &c., viz.—G. Boys, coal-merchant, &c. Also that the said Gas Light and Coke Company are in the said rate or assessment over-rated, in respect of the yearly value of the said land, house, warehouses, and buildings, mains or

3. Forms relating to poor rates.

pipes, and other apparatus, according to the principle of rating adopted in the said parishes of Saint Margaret and Saint John the Evangelist, by assessing a certain proportion only of the real annual value of rateable property in those parishes. Also, that the said rate is in other respects partial, unjust, and illegal. And further take notice, that you are to produce at the time of hearing this appeal, the said rate, purporting to have been made on the 25th day of May, 1830, as aforesaid. And also, all the rates or assessments made for the relief of the poor, repair of the highways, and cleansing the streets of the said several parishes, since the year 1828. Dated the 6th day of October, 1830.

Yours, &c. A. B. C. D. &c.

Attorney for the appellants, the Gas Light and Gas Company.

N. B. On hearing the appeal, the sessions confirmed the rate.

25. Petition of appeal against a poor's rate (a).

To the Worshipful His Majesty's Justices of the Peace, in and for the county of _____ in their general quarter sessions of the peace, assembled.

The Petition and Appeal of A. B., an inhabitant, assessed to the poor's rate of the parish of _____ in the said county.

Sheweth,

That a rate or assessment was made on or about the _____ day of _____ last past, and published [or said to be published] in the church of the said parish on or about Sunday, the _____ day of _____ last past, by the churchwardens and overseers of the poor of the said parish, and for other the purposes therein mentioned, by virtue whereof your petitioner and other inhabitants of the said parish, are charged and assessed in divers large sums of money for the purposes aforesaid.

That your petitioner is in and by the said rate assessed for the rateable property occupied by him in the said parish, at a larger sum of money than he ought to be assessed at, in respect of the annual value of the same; and also that your petitioner [state the other causes of appeal, as in the notice].

That the names of E. F. and G. H., persons occupying rateable property in the said parish, are omitted in the said rate or assessment, and are not charged or assessed in the said rate for two messuages, tenements, or dwelling-houses, which they respectively occupy within the said parish of _____

Your petitioner, therefore, conceiving himself to be aggrieved by the said rate or assessment, doth hereby appeal to your worships against the same, and requests that a day may be appointed, in this present session, for the hearing and determining the said appeal, and that you will thereupon quash the said rate, or alter and amend the same in such manner, and grant to your petitioner such relief in the premises, as to you shall seem meet.

And your petitioner will pray, &c.

E. F., Solicitor to the Petitioner.

26. Order for hearing appeal, appointing time, &c.

to wit. } *At the general quarter sessions of the peace, of our lord the King, holden in and for the county of _____ at the sessions-house for the said county, on the _____ day of _____ in the year of the reign of our sovereign lord George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and _____*

It is ordered by this court, that the churchwardens and overseers of the poor of the parish of _____ in this county, have notice of the within appeal, and that they and all persons concerned do attend this court at the sessions-house aforesaid, on _____ next, the _____ day of _____ instant, at the hour of nine

(a) This petition and the following order are required on an appeal in the county of Middlesex. In most counties the petition is dispensed with, the entry of the appeal with the clerk of the peace being deemed sufficient; and *semble*, that as an appeal is matter of right, there can be no ground, in any case, to require a petition.

in the forenoon of the same day, to hear and abide the judgment and determination of the said court, touching the said appeal.

3. Forms
relating to poor
rates.

By the Court,
S—.

To the Churchwardens and Overseers of the Poor of the parish of
county of and also to

in the 27. Notice of
trial of an appeal
against poor's
rate, which ap-
peal had been
several times
respited.

Take notice that and inhabitants and occupiers of messuages, lands, tenements, and hereditaments in the said parish of and rated as such in the rate or assessment hereinafter mentioned, do intend, at the next general quarter sessions of the peace, to be holden at in and for the said county of on the day of to prosecute, and try an appeal entered at the general quarter sessions of the peace, holden at aforesaid, on the day of and there respited by the justices until the then next sessions; and which appeal has been further respited from sessions to sessions, until the said sessions, to be holden on the said day of against a rate or assessment, intituled, "An assessment, &c.," and allowed by and two of the justices of the peace in and for the said county, on the day of the grounds (a) of which said appeal are fully set forth and declared in the notice thereof, under my hand, bearing date the day of

A. B.,
the Appellants.

Attorney for the above named

To J. M., Churchwarden, and to W. P., and J. H., the late Overseers, and H. A., and W. P., the present Overseers of the Poor of the parish of C., in the county of N., and to each and every of them. To A. B. C. D.

28. Another
form of notice of
trial of an appeal
against a poor's
rate.

I do hereby give you notice, that I intend at the next general quarter sessions of the peace, to be holden in and for the county of N., at N., on Thursday, the thirtieth day of April, instant, to enter and try an appeal [entered or by an appeal at the last general quarter sessions of the peace holden at N., aforesaid, in the county aforesaid,] against a certain rate or assessment, intituled [copy the title of the rate,] for the following, amongst other reasons:

1st. Because the said rate or assessment has not been made, published and allowed, in due course of law.

Eight several
grounds of ap-
peal.

2d. Because the rate is made for other purposes than for the relief of the poor.

3d. Because I am assessed at too large a sum, and in an unfair proportion in comparison with the sum and proportion assessed on A. B., C. D., or one of them.

4th. Because I am assessed at a greater sum than I ought to be assessed at.

5th. Because the persons hereinbefore named, or some of them, are assessed at less sums than they ought to be assessed at.

6th. Because the said persons are not assessed at all for lands and houses which were in their occupation when the said rate was made.

7th. Because the said persons, or some of them, are not assessed to the full value of their local visible property within the said parish.

8th. Because I am assessed for property which was not in my occupation at the time of making the said rate, and for other property which is not liable to be assessed to the relief of the poor.

9th. Because it does not sufficiently appear on the said rate what persons thereby assessed are charged.

10th. Because certain persons are assessed for parts of certain farms, houses, and lands, but such part is altogether uncertain and indefinite.

11th. Because it does not appear, whether the persons assessed are charged as occupiers of lands, &c. or as inhabitants.

12th. Because the profits of the property for which I am assessed are devoted to public purposes, and there is no beneficial occupier.

(a) See next form.

3. Forms
relating to poor
rates.

And, lastly, because the rate and assessment is, in other respects, illegal, unequal, partial, oppressive, and unjust.

And I do hereby give you, the said churchwarden and overseers, notice to produce, at the hearing of the said appeal, the said pretended rate or assessment, and all other rates and assessments made for the relief of the poor of the said parish, for the twenty years last preceding the date hereof; likewise certain valuations made by J. L., J. C., J. C., and T. B., some or one of them, and every other valuation made by the direction of any vestry, or any churchwardens and overseers of the said parish, all or any of other rateable property in the said parish; and that you, A. B. C. D. respectively produce all deeds, leases, agreements, admissions, and other documents, respecting or concerning the premises for which you, and each of you, are jointly or severally rated or assessed, or appear so to be, in and by the said rate or assessment, or omitted to be therein rated or assessed. Given under my hand, this tenth day of April, one thousand eight hundred and twenty-nine.

T. M.,

Attorney for the said Sir R. B. B.

29. Order of sessions, on hearing appeal, confirming, on principle, a rate on gas pipes laid in ground, and referring to a barrister to fix the proper amount of rate on gas company and others (a).

City, Borough, and Town, }
of Westminster, in the }
county of Middlesex.

At the general quarter sessions of the peace of our lord the king, holden at the Guildhall, in the Sanctuary, Westminster, in and for the liberty of the Dean and Chapter of the Collegiate Church of Saint Peter, Westminster, the City, Borough, and Town, of Westminster, in the county of Middlesex, and Saint Martin-le-Grand, London, on Thursday, the twenty-first day of October, in the first year of the reign of our Sovereign lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and thirty, before Francis Const, chairman, William Thornton, and George Saunders, esquires, and others, their fellows justices of our said lord the king, assigned to keep the peace in the Liberty aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the same liberty.

The Governor and Company of Chelsea Water-works, appellants; and the Churchwardens and Overseers of the Poor of the parishes of Saint Margaret and Saint John the Evangelist, Westminster, respondents.

Whereas the Governor and Company of Chelsea Water-works did, by James Wortham, their solicitor, at this present session, exhibit their petition and appeal, setting forth, that a rate or assessment, purporting to be made on the twenty-fifth day of May, one thousand eight hundred and thirty, pursuant to the directions of an act of parliament made and passed in the twenty-fifth year of the reign of his late Majesty, George the Second, intituled, "An Act for the better relief and employment of the poor in the parishes of Saint Margaret and Saint John the Evangelist, in the city of Westminster, and for cleansing the streets and repairing the highways within the said parishes," and purporting to be an equal pound rate or assessment for the relief of the poor, repair of the highways, and cleansing the streets in the said parishes of Saint Margaret and Saint John the Evangelist, in the city of Westminster, upon all and every the person and persons who inhabited, held, occupied, or enjoyed, any land, house, shop, wharf, warehouse, or other building, within the said parishes, or either of them, or any other person or persons who, by law, were chargeable and assessable for and towards the relief of the poor within the said parishes, pursuant to the before-mentioned act.

That the petitioners, in and by the said rate or assessment, were rated as occupiers, in the following form:—"The governor and company of the Chelsea Water-works, for messuage or tenement in Great Queen Street, in the parish of

(a) By adopting a reference of this nature on appeals at sessions, much time of the court in any inquiry into facts may be saved, and the editor therefore strongly recommends this course to be generally pursued.

Saint Margaret, used main pipes and other apparatus for the conveyance of water, belonging to the said corporation, situate, being, and fixed in the ground in the said parishes of Saint Margaret and Saint John the Evangelist;—annual value, five hundred pounds each; instalment, twenty-five pounds. That the petitioners, in pursuance of the provisions of the above-mentioned statute, paid the said rate or instalment of twenty-five pounds, on the twenty-fourth day of July, one thousand eight hundred and thirty, to the person duly authorised to receive the same. And that the petitioners found themselves aggrieved by the said rate or assessment. Now, upon hearing the said appeal, and what hath been alleged by the said respective parties and their counsel in and concerning the premises, this court doth order, adjudge, and determine, that the said appellants are liable to be rated for messuage or tenement in Great Queen Street, in the parish of Saint Margaret, and mains, pipes, and other apparatus for the conveyance of water belonging to the said corporation, situate, being, and fixed in the ground in the said parishes of Saint Margaret and Saint John the Evangelist, towards the relief of the poor, of repair of the highways, and cleansing the streets as aforesaid, of the said parishes. And doth further order, that the hearing and determining the said appeal, as to the sum at which the said appellants should be rated for the same, be and the same is hereby adjourned until the next general quarter session of the peace, to be holden for this city and liberty. And it is, by and with the consent of the said parties and their counsel, ordered that it be referred to the Honourable Thomas Erskine, one of his Majesty's counsel, learned in the law, to ascertain and certify to the said next general quarter session of the peace, upon what sum the said governor and company ought, in such rate or assessment, to be rated and assessed, so as the said referee do make his certificate in writing, of and concerning the matter hereby referred, ready to be delivered to the said parties, or either of them, on or before the tenth day of January next, with liberty for the said referee, under his hand in writing at the foot hereof, from time to time, so long as he shall think fit to enlarge the time for making his said certificate.

And it is, by the like consent, further ordered that the witnesses, to be examined before the said referee touching the matters aforesaid, shall be sworn before the court of general quarter sessions of the peace, now holding, or before some court of general or quarter sessions of the peace to be holden in and for the said city and liberty, or before a justice of the peace for the said city and liberty; and that the said appellants and respondents shall respectively produce, before the said referee, all such books, deeds, papers, and writings, in their or either of their custody or power, relating to the matters in difference, as the said referee shall think fit to require.

And it is, by the like consent, further ordered that if either of the said parties shall, by affected delay or otherwise, wilfully prevent the said referee from making his certificate, or shall not attend after reasonable notice, and without such excuse as the said referee shall be satisfied with and adjudge to be reasonable, then the said referee may proceed *ex parte*, and the party occasioning the delay shall pay to the other such costs as the court of quarter sessions of the peace, for this city and liberty, shall consider to be reasonable and just.

By the Court,
VAUGHAN.

In the King's Bench.

In the matter of } Sir R. B. B., Bart., appellant; and the Churchwardens and
Overseers of the Poor of the parish of C., in the county of
N., respondents.

Easter Term, 10th Geo. IV.

Northampton, } Whereas, on or about the seventh day of November, in the year
to wit. } of our Lord one thousand eight hundred and twenty-eight, an
assessment or rate was made and assessed for the relief of the poor, and for
other purposes relating to the poor of the parish of C., in the county of N.,
aforesaid, for the year of our Lord one thousand eight hundred and twenty-
eight, entitled, "An assessment for the necessary relief of the poor, and for

30. Entry of pro-
ceeding on an
appeal at ses-
sions against a
rate and order
thereon, subject
to a case for
opinion of court
of King's Bench.

*other the purposes in the several acts of parliament mentioned, relating to the poor of the parish of C., in the county of N., made and assessed the seventh day of November, one thousand eight hundred and twenty-eight, being the sixth rate, at one shilling in the pound, for the present year, one thousand eight hundred and twenty-eight." And whereas the said Sir R. B. B., Bart, did, at the general quarter sessions of the peace of our said lord the king, holden in and for the said county of N., on the day of aforesaid, by leave of that court, enter his appeal against the above rate or assessment to the judgment of the court of the general quarter sessions of the peace now last past, holden in and for the said count, at N., in the said county, on the
day of in the year of our Lord one thousand eight hundred and when, upon a full hearing of the said appeal, and what was alleged by counsel on both sides, the said court of the general quarter sessions of the peace now last past, did order that the said rate or assessment should be quashed and set aside, subject, nevertheless, to the opinion of the honourable the justices of his Majesty's Court of King's Bench, at Westminster, on a special case now stated and agreed upon between the parties, appellant and respondent, and their counsel, and which case is as follows:—(See form of case, post, as to orders of removal.)*

Borough of *Bury Saint Edmund's*,
in the county of *Suffolk*.

The information and complaint of one of the Overseers of the Poor of the parish of *Saint* within the said borough taken on oath before us, two of his Majesty's justices of the peace in and for the said borough [one whereof is of the *quorum*], this day of one thousand eight hundred and

This informant, upon his oath saith, that the several persons hereunder named have refused to pay to him the several sums of money assessed upon them respectively, in and by a certain rate or assessment, made for the relief of the poor of the said parish of Saint upon the day of last past, the same having been lawfully demanded of them respectively. He therefore prays redress against the said several persons hereunder named, so refusing to pay as aforesaid, as the law requires.

E. F.

Taken upon oath, } A. B.
before us. } C. D.

<i>Names of Defaulters.</i>	<i>Residence.</i>	<i>Amount of Rate.</i>
		£ s. d.

to wit. } Be it remembered, that on this day of in the year
 } of our Lord one thousand eight hundred and at
 } in the parish of in the said county of
one of the overseers of the poor of the parish of in the said county,

cometh before of his Majesty's justices of the peace in and for the said county, and giveth to understand and be informed, that the persons herein-
after named, being inhabitants and occupiers of houses and lands in the said parish, were severally and respectively duly assessed for and towards the necessary relief of the poor of the said parish, by a rate or assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, on the respective times inserted at the top of the several and respective money columns hereinafter following, in the several and respective sums of money set in figures in the several and respective money columns following, opposite to their several and respective names following; and that he hath demanded of and from the said several persons respectively, the said several and respective sums of money, and that they have severally and respectively refused and neglected, and still do refuse to pay the same. Wherefore the said informant humbly prays that the said several persons may be summoned to appear before two of his Majesty's justices of the peace, in and for the said county, to show cause why they severally and respectively refuse to pay the several and respective sums so demanded from them as aforesaid; and (if they can) to show cause why a warrant should not be granted to make distress for the same.

*Exhibited before the day
and year first above written.*

[illegible]

(a) N. B. The paper on which this form is printed, usually contains three or more sides ruled in like manner.

3. Forms
relating to poor
rates.

Ante, p. 230.

33. Information
against one per-
son for non-pay-
ment of a poor's
rate, made before
one justice, to
summon before
two others (a).

to wit. } The information and complaint of G. H., overseer of the poor of the
parish of in the said county, made on his oath before me,
A. B., esquire, one of his Majesty's justices of the peace in and for the county
of on the day of in the year of our Lord one thousand
eight hundred and thirty-one, who says, that in and by a rate and assessment
made, assessed, and allowed and published, according to the statutes in that case
made and provided, E. F., an inhabitant and occupier [or occupier only, if such
is the case], of premises [or as the case may be], in the said parish of
was duly rated and assessed for and towards the necessary relief of the poor of
the said parish for this present year [or the last year, as the case may be,] in the
sum of and that the said sum hath been lawfully demanded of the said
E. F., who hath refused and doth refuse to pay the same: Whereupon he, the
said G. H., prayeth that he, the said E. F., may be summoned to answer the
said complaint before two of his Majesty's justices of the peace for the said
county.

Before me,

A. B.

Ante, p. 230.

34. Precept from
the justices to
summon several
defaulters.

County of } To the Churchwardens and Overseers of the Poor of the parish of
to wit. } in the county of and to the Constables of the said
parish.

Whereas complaint hath been made unto us, whose names and seals are here-
unto set, two of his Majesty's justices of the peace for the said county of
by the churchwardens and overseers of the poor of the parish of afore-
said, that the several persons hereunder named, inhabitants of the said parish,
(being duly rated and assessed, the several sums of money to their respective
names set, for and towards the necessary relief of the poor of the said parish,)
have neglected or refused to pay the said several sums, notwithstanding the same
have been duly and respectively demanded of them.

These are, therefore, to charge and command you, that you, or some of you,
do forthwith summon and warn the said several persons, hereunder named, to be
and appear before us, and other his Majesty's justices of the peace for the said
county, on the day of at o'clock in the noon,
to show cause why they refuse to pay the said several sums so assessed on them
as aforesaid, otherwise warrants of distress for levying the same, as the law
directs, will be made out against them.

Given under our hands and seals, this day of one thousand
eight hundred and

A. B. (L. S.)
C. D. (L. S.)

Ante, p. 230.

35. Constable's
summons
thereon.

County of } To the parish of in the county of
to wit. }

By virtue of a warrant to me directed, under the hands and seals of A. B. and
C. D., esquires, two of his Majesty's justices of the peace for the county of
I do hereby summon you personally to be and appear before the said
justices, and such other of his Majesty's justices of the peace for the said county
as shall be assembled on the day of at by
o'clock in the noon, to show cause why you refuse to pay the rate or assess-
ment made for the relief of the poor of the said parish of for the year
one thousand eight hundred and thirty one [or as it may be] being the sum

(a) See 43 Eliz. c. 2, s. 4; 17 Geo. II. c. 38, s. 7; 54 Geo. III. c. 170. s. 12;
3 Geo. IV. c. 233.

of otherwise a warrant of distress for levying the same, as the law directs, will be made out against you. Dated this day of in the year of our Lord one thousand eight hundred and thirty-one. 3. Forms relating to poor rates.

G. H.,
Constable of the said parish.

Ante, p. 230.

County of } To the Churchwardens and Overseers of the Poor of the parish
to wit. } of in the said county, and to the Constables of the said
parish aiding and assisting therein. 36. Warrant of distress against one person after the foregoing summons (a).

Whereas, in and by a rate and assessment, dated the day of made, assessed, allowed, and published according to the statutes in that case made and provided, E. F., an inhabitant and occupier of a house in the said parish of was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year, in the sum of : And whereas it duly appeareth unto us, two of his Majesty's justices of the peace in and for the said county [one whereof is of the quorum], as well upon the oath of G. H., overseer of the poor of the said parish, as otherwise, that the said sum of pounds hath been lawfully demanded of the said E. F., by the said G. H., and that he, the said E. F., hath refused, and doth refuse, to pay the same : And whereas the said E. F., having appeared before us [or me], in pursuance of our summons for that purpose, hath not showed to us any sufficient cause why the same should not be paid [or "Whereas it hath been duly proved to us, upon the oath of one of the constables of the said parish, that the said E. F. hath been duly summoned to appear before us [or me,] the said justices, to show cause why the same should not be paid, but he, the said E. F., hath neglected to appear according to such summons, and hath not showed to us [or me], any sufficient cause why the same should not be paid."]* These are therefore to require you forthwith to make distress of the goods and chattels of him, the said E. F.; And if, within the space of [five] days next after such distress, by you taken, the said sum, and also the further sum of being the costs incurred in the premises, making in the whole the sum of together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and, out of the money arising by such sale, that you detain the said sum of and also your reasonable charges of taking, keeping, and selling the said distress, rendering to him, the said E. F., the overplus on demand; and if no such distress can be made, that then you certify the same unto us to the end that such further proceedings may be had therein as to the law doth appertain. After appearance of party, After summons and non-appearance.

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty one.

A. B. (L. S.)
C. D. (L. S.)

To the Churchwardens and Overseers of the Poor of the parish of in the said

to wit. } Whereas, in and by a rate or assessment, dated the made, assessed, allowed, and published according to the statutes in that case made and provided, the several persons whose names are hereunder written, inhabitants and occupiers of lands and tenements in the parish of aforesaid, were duly rated and assessed for and towards the necessary relief of the poor of the said parish, in the several sums of money set against their respective names : And whereas, it duly appeareth unto us, two of his Majesty's justices of the peace in and for the said [one of us being of the quorum] upon the oath of one of the constables of the said parish, that the said several persons have been duly summoned to appear 37. Usual form of a warrant of distress against several persons.

(a) One justice may receive the complaint, and issue a summons returnable before two, 3 Geo. IV. c. 29, s. 2.

3. Forms
relating to poor
rates.

before us, by virtue of a warrant or summons under our hands and seals, directed to the constables of the said parish, to show cause respectively why the same should not be paid; And whereas it also duly appeareth unto us, upon the oath of one of the overseers of the poor of the said parish, that the said several sums of money have been lawfully demanded of them respectively, and that they have severally refused to pay the same, and that the said several sums of money are still due and unpaid.

These are, therefore, to require you forthwith to make distress of the respective goods and chattels of the said several persons under-named, and if within the space of four days next after such respective distress by you taken, the said several sums of money, together with the reasonable charges of taking and keeping the said distresses respectively shall not be paid, that then you do sell the said goods and chattels so by you respectively distrained, and out of the money arising by such respective sales, that you detain the said respective sums of money, and also your reasonable charges of taking, keeping, and selling the said respective distresses, rendering to them respectively the overplus on demand; and where no such respective distress can be made, that then you certify the same to us, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under our hands and seals, this day of
one thousand eight hundred and

A. B. (L. S.)

C. D. (L. S.)

[Then is subscribed a list of defaulters, with sums assessed in arrears.]

38. Distress
warrant for
poor's rate in
London.

To the Churchwardens and Overseers of the Poor of the parish of in
the city of London,* and to all Constables of the said city whom these may
concern.

London } Whereas, in and by certain rates or assessments, made, assessed,
to wit. } allowed, and published, according to the statutes in that case made
and provided,

being inhabitants and occupiers of in the said
parish of in the said city,

rated and assessed for and towards the necessary relief of the poor of the said
parish, in the sum following, that is to say, the

And whereas it appeareth unto me, Lord Mayor of the said
city, that the said sum of money became so due at last; and as well
upon oath as otherwise, that the said sum of money ha been
demanded of and that ha refused, and do
refuse to pay the same: And whereas it hath been proved to me, that the said

ha been summoned to show cause why the same should not be paid; but
ha not showed sufficient cause why the same should not be paid: These are
therefore to require you, the said churchwardens, with the assistance of a con-
stable of the said city, to make distress of the goods and chattels of the said

and if, within the space of five days next after such distress by
you taken, the said sum of together with the reasonable charges
of taking and keeping the said distress, shall not be paid, that then you do sell
the said goods and chattels, so by you distrained, and out of the money arising by
such sale of the goods and chattels of the said

that you detain the said sums of money so due as aforesaid; and also your reason-
able charges of taking, keeping, and selling the said distress, rendering to

the overplus on demand; and if no such distress can be made,
that then you certify the same unto me, to the end that such further proceedings
may be had therein as to law doth appertain. Given under my hand and seal,
the day of one thousand eight hundred and thirty.

A. B. (L. S.) (a)

(a) One alderman in London may act in cases where, out of it, two justices
must concur, 43 Eliz. c. 2, s. 8, ante, 12.

Borough of
Bury St. Edmund's,
in the
County of Suffolk. } To the Churchwardens and Overseers of the Poor of the
parish of Saint
in the said borough.

III. Forms
relating to Poor
Rates.

39. Justices' warrant to distrain for poor's rate, made by the guardians of the poor in Bury.

Whereas, in and by a rate or assessment made on the day of last past, by the aforesaid churchwardens and overseers (by virtue of a warrant to them directed, under the hands and seals of two of his Majesty's justices of the peace in and for the said borough,) upon all and every the inhabitants and occupiers of lands, houses, tenements, tithes impropriate, appropriation of tithes, and hereditaments, within the said parish, for raising the sum of

set on the said parish, by the guardians of the poor of the said borough, towards the maintenance and employment of the poor within the care of the said guardians, for three calendar months from the day of last past; and allowed and published according to the several statutes in that case made and provided;

being an inhabitant and occupier of within the said parish, was duly rated and assessed at the sum of to be by h paid for the purposes aforesaid. And whereas, it duly appeareth unto us, two of his Majesty's justices of the peace, in and for the said borough, as well upon the oath of one of the said overseers of the poor of the parish aforesaid, as otherwise, that the said sum of hath been lawfully demanded of the said and that the said hath refused and doth refuse to pay the same. And whereas, it hath been duly proved to us, upon oath, that the said hath been duly summoned to appear before us the said justices to show cause why the same should not be paid.

These are, therefore, to require you the said churchwardens and overseers, that you, some or one of you, do forthwith make distress of the goods and chattels of h the said And if within the space of four days next after such distress by you taken, the said sum, together with reasonable charges of the said summons, and of taking and keeping the said distress, shall not be paid, that then you, some or one of you, do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you, some or one of you, do detain the said sum of and also the charges aforesaid, and of selling the said distress; rendering to h the said the overplus, if any, on demand. And if no such distress can be made, that then you, some or one of you, do certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain.

Given under our hands and seals, this day of in the year of our Lord, one thousand eight hundred and

County of } Whereas, proof, on oath, hath been made, before me, G. H., Esq., 40. The indorsement to be written on the warrant of distress, if it is to be executed in another county.
to wit. } one of his Majesty's justices of the peace for the county of
writing of the justices of the peace within mentioned, I do hereby authorise that the names, A. B., and C. D., are of the respective hands
who bringeth to me the written warrant, and all other persons to whom the said warrant is directed, to execute the same within the county of E.
Given under my hand and seal, the day of one thousand eight hundred and

County of } G. H., one of the Overseers of the Poor of the within-named 41. The form of the overseers' return, where no sufficient distress is found, to
to wit. } parish of T. maketh oath, this day of in the year
of our Lord one thousand eight hundred and that he has
used his best endeavours to levy the sum named in the within-mentioned war-

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be indorsed on the back of the warrant, under 43 Eliz. c. 2, s. 1.

42. Commitment thereon under 43 Eliz. c. 2, s. 4; 3 Geo. IV. c. 23, s. 1.

warrant, on the goods and chattels of the said
can be found whereon to levy the same.

Sworn before us, two [or me, one] of his
Majesty's justices of the peace in and
for the county of

but that no sufficient distress

p. 230.

County of } To the Constable of the parish of and to the Keeper of the
to wit. } Common Gaol, at in the said county.

Whereas, &c. [same as Form 36, ante, 1063, to the asterisk, and then], and, whereas, on the said day of last, we [or they] did issue our [or their] warrant to the churchwardens and overseers of the poor of the said parish of to levy the said sum of by distress and sale of the goods and chattels of him, the said E. F., and to apply the same, according to law; and, whereas, it duly appears unto us [or me] as well upon the oath of G. H., overseer of the poor of the parish of T., aforesaid, as otherwise, that he, the said overseer of the poor, has used his best endeavours to levy the said sum on the goods and chattels of him, the said E. F., as aforesaid, but that no sufficient distress can be had whereon to levy the same. These are, therefore, to command you, the said constable of the parish of T., aforesaid, to apprehend the body of the said E. F., and him safely to convey to the common gaol at in the said county, and there deliver him to the said keeper thereof, together with this precept: And we [or I, as it may be] do hereby command you, the said keeper of the said common gaol, to receive into your custody, in the said common gaol, the said E. F., there to remain, without bail or mainprize, until payment of the said sum.

Given under our hands and seals, [or, my hand and seal,] the day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

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43. Notice from overseers of poor to father of pauper, of intended application to petty sessions, for order of maintenance, under 59 Geo. III. c. 12, s. 26, or 4 & 5 Will. IV. c. 76.

To Mr.

in the county of

Take notice, that the overseers of the poor of the parish of in the county of do intend to make application to the next petty sessions of the peace, to be holden on the day of at in and for the said county, for an order of on you to pay such weekly sum for and towards the relief of G. H. your son, a poor person of the said parish of T. and unable to work, and now chargeable to the said parish, as the said petty sessions shall think fit.

Dated, &c.

A. B.

One of the overseers of the parish of T. in the county of

44. Overseers' complaint thereupon.

County of } At a petty sessions of the peace of our lord the king, held at
to wit. } in the said county, the day of
in the year of our Lord one thousand eight hundred and before the undersigned justices of our said lord the king, in and for the county aforesaid. An application is made to us the said justices, by the undersigned E. F., one of the overseers of the poor of the parish of in the county of on behalf of the churchwardens and overseers of the poor of the said parish, to have an order on of in the county of for him to maintain his who is poor and unable to work for himself, and chargeable to the said parish of T., he

the said being a person of sufficient ability to provide for his said son [or, daughter, or, grandson.]

E. F.

One of the overseers of the poor of the parish of T. aforesaid.

Exhibited before us,

A. B. }
C. D. }

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dering of Poor.

p. 80.

County of } The order of A. B. and C. D., esquires, two of his Majesty's justices
to wit } of the peace in and for the said county, one whereof is of the quorum,
day of } made at a petty sessions held at in the said county, the
in the year of our Lord one thousand eight hundred and Upon an
application to us the said justices, at the said petty sessions, by the churchwardens and
overseers of the poor of the parish of T., in the county of to have an order
made on [or,] of in the said county of (a) for him to
maintain his son [or, daughter or, grandson] who is poor and unable to work so as
to maintain and support himself, and chargeable to the said parish of T., he the said
[or,] being a person of sufficient ability to maintain and provide for
his said son, &c. And the said [or,] having been duly summoned to
appear before us the said justices, at the said petty sessions, to the end that we might
examine into the cause and circumstance of the premises, and now appearing before
us in pursuance of the said summons, but he has not shown any sufficient cause why
such order should not be made, and we having heard the parties so complaining, and
duly considered the circumstances of the said complaint, as well as the want of any
adequate defence on the part of the said [or,], do adjudge and
determine, that the said is poor and unable to work so as to maintain
and support himself, and actually chargeable to the said parish of T., and that the
said [or,] is a person of sufficient ability to maintain and provide for
his said son, &c. And therefore we do order that the said [or,] shall
and do forthwith, upon notice of this our order, pay or cause to be paid to the church-
wardens and overseers of the poor of the said parish of T. for the time being, or to
some or one of them, weekly and every week from this present time, the sum of
for and towards the sustentation, relief, maintenance, and support of the said
for and during so long time as the said shall be chargeable to the parish of
T., or until the said [or,] shall be legally directed to the contrary.

45. Order on a
parent or child to
give relief, &c.

Given under our hands and seals, at aforesaid, the day and year first above
written.

A. B. (L. S.)
C. D. (L. S.)

p. 78.

County of } The information and complaint of E. F., one of the overseers of the
to wit } poor of the parish of T., in the county of made on oath before
peace in and for the county of us, A. B. and C. D., esquires, two of his Majesty's justices of the
county of the day of at a petty sessions held at in the said
hundred and in the year of our Lord one thousand eight
who on his oath aforesaid saith, that by an order under the hands
and seals of us A. B. and C. D., esquires, two of his Majesty's justices of the peace in
and for the county of one whereof is of the quorum, made at a petty sessions
held at in the said county of the day of in the year of our
Lord one thousand eight hundred and upon an application to the said last-
mentioned petty sessions by the churchwardens and overseers of the poor of the said
parish of T., to have an order made on of in the said county of
for him to maintain his who is poor and unable to work so as to maintain and
support himself, and chargeable to the said parish of the said being a
person of sufficient ability to provide for his said he the said was or-
dered, upon due notice thereof, to pay, or cause to be paid, to the churchwardens and
overseers of the poor of the parish of T., for the time being, or to some or one of them,
weekly and every week, from the date of the said order, the sum of for and
towards the sustentation, relief, maintenance, and support of the said for and

46. Information
of an overseer of
the poor against a
parent or child,
for disobeying an
order of main-
tenance, &c.

(a) The county to which the justices belong, p. 81.

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dering of Poor.

during so long time as the said shall be chargeable to the said parish of T. or until the said shall be legally directed to the contrary; but that notwithstanding he, the said on the day of in the year of our Lord had due notice of the said order, and was then and there duly requested by the said E. F. to pay, &c. [following the terms of the order,] yet he has not observed nor performed the said order for and during months; that is to say, from the day of in the year of our Lord one thousand eight hundred and to the day of following, and hath, during all that time, refused to pay, &c., [following the terms of the order,] whereby the said has subjected himself to the penalty and forfeiture of twenty shillings for each month, to go and be employed to the use of the poor of the said parish of T., and towards a stock and habitation for them, and other necessary uses and relief. (a) And thereupon he, the said prays us, the said justices first before named, that the said penalty be levied by some or one of the churchwardens or overseers of the aforesaid parish of by warrant of distress, and that justice may be done in the premises.

Before us, A. B.

E. F.

C. D.

p. 78.

47. Warrant of distress on a parent or child for disobeying an order of maintenance, &c.

County of } To the Churchwardens and Overseers of the Poor of the parish of T.
to wit. } in the county of .

Whereas, by an order under the hands and seals of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the county of one whereof is of the quorum, made at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and thirty upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of T. in the county of to have an order made on of in the said county of for him to maintain his who is poor and unable to work, so as to maintain and support himself, and chargeable to the said parish of T., the said being a person of sufficient ability to provide for his said he, the said was ordered, upon due notice thereof, to pay, or cause to be paid, to the churchwardens and overseers of the poor of the said parish of T., for the time being, or to some one of them, weekly and every week, from the date of the said order, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long time as the said shall be chargeable to the said parish of T., or until the said shall be legally directed to the contrary. And whereas it appears unto us, A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of at a petty sessions held at in and for the aforesaid county of this day of in the year of our Lord one thousand eight hundred and thirty on the oath of one of the overseers of the poor of the parish of T. aforesaid, that notwithstanding he, the said has had due notice of the said order, yet he has not observed nor performed the said order for and during months; that is to say, from the day of in the year of our Lord one thousand eight hundred and thirty to the day of following, whereby he, the said has subjected himself to the penalty and forfeiture of twenty shillings for each month. And whereas the said has been duly summoned to appear before us, at this present petty sessions, to answer unto the said complaint, but has not shown to us any sufficient cause why the said order has not been complied with, and why the said penalty of twenty shillings a month should not be levied by warrant of distress from us, or in default thereof, why he, the said should not be committed to the common gaol, there to remain, without bail or mainprize, till the said forfeitures shall be paid: These are, therefore, to require you forthwith to make distress of the goods and chattels of him, the said . And if, within the space of four days next after such distress by you taken, the said penalty, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the amount of the said penalty (being the sum of), to go and be employed to the use of the poor of your said parish of T., and towards a stock and habitation for them, and other necessary uses and relief, and also that you detain your reasonable charges of taking, keeping, and selling the said distress, rendering to him the said the overplus on demand.

(a) The party is also liable to be indicted for disobedience of the order, ante, 81.

And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings be had therein as to law doth appertain.

Given under our hands and seals at aforesaid, this day of in the year of our Lord one thousand eight hundred and thirty.

A. B. (L. S.)
C. D. (L. S.)

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dering of Poor.

p. 78.

County of } To the Constable of the parish of in the said county, and to the
to wit. } Keeper of the Common Gaol of the said county of at .

48. Commitment
of a parent or
child for disobey-
ing an order of
maintenance.

Whereas, by an order under the hands and seals of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the county of one whereof is of the quorum, made at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and thirty upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of T., in the county of to have an order made on of in the said county of for him to maintain his who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of T., the said being a person of sufficient ability to provide for his said : He the said was ordered, upon due notice thereof, to pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of T. for the time being, or to some or one of them, weekly and every week, from the date of the said order, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long a time as the said shall be chargeable to the said parish of T., or until the said shall be legally directed to the contrary; which said order having been disobeyed and complaint thereof made to A. B. and C. D., esquires, two of his Majesty's justices of the peace for the said county of on the day of in the year of our Lord one thousand eight hundred and thirty-one, at a petty sessions then held at in the said county of by and upon the oath of one of the overseers of the poor of the said parish of T., they the said last-mentioned justices did then and there issue their warrant to the churchwardens and overseers of the poor of the said parish of T., to levy the said penalty (being the sum of) by distress and sale of the goods and chattels of him the said and to apply the same according to law. And whereas it duly appears unto us, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the said county of at a petty sessions held at in the said county of this day of in the year of our Lord one thousand eight hundred and thirty as well upon the oath of E. F., one of the overseers of the poor of the said parish of as otherwise, that he the said overseer of the poor has used his best endeavours to levy the said sum on the goods of him the said as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you, the said constable of aforesaid, to apprehend the body of the said and him safely to convey to the common gaol of the said county of at in the said county last-mentioned, and there deliver him to the said keeper thereof, together with this precept. And we do hereby command you, the said keeper of the said common gaol, to receive into your custody, in the said common gaol, the said and him there safely to keep without bail or mainprize, till the said forfeitures shall be paid; and for so doing this shall be your sufficient warrant.

Given under our hands and seals at T. aforesaid, the day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

Form of assignment of pay by a pensioner, under the 59 Geo. III. c. 12, s. 29, ante, 68.

49 Assignment
of pay by a pen-
sioner.

I [naming the pensioner or other applicant; and stating such particulars as shall be requisite] do hereby assign to the heritors and kirk session of the parish of G., the next payment of the pension at the rate of per diem [or as the case may be] granted to me as and payable from in order to secure to the said parish of G. the repayment of the sum of advanced to me [or, of the weekly sum of

50. Assignment
of a pension of a
Chelsea or other
pensioner in Scot-
land, under 6
Geo. 4, c. 27.
This form is pre-
scribed by the
statute.

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ordered or agreed to be advanced to me, as the case may be by such heritors and kirk session.

Signed by the above named
before me one of his Majesty's jus-
tices of the peace for this } A. B.
day of one thousand }
eight hundred and thirty- }

51. Certificate to be transmitted to the Commissioners of Chelsea Hospital, when an order has been made by the magistrates under 59 Geo. 3, c. 12, s. 31.

We the undersigned, being two of the churchwardens and overseers of the parish of P. in the county of do hereby certify that A. B. is an out-pensioner of the Royal Hospital of Chelsea, from the regiment of at per diem, and that he is now alive and residing at .

Dated this day of in the year of our Lord one thousand eight hundred and thirty- .

} Churchwardens.
}
} Overseers.

[The days on which the several quarterly payments become due are as follows: viz. the twenty-fifth of March, the twenty-fifth of June, the twenty-ninth of September, and the twenty-fifth of December.]

p. 87.

52. Certificate by justices for the payment of the wages of a seaman, convicted of smuggling, for the relief of his wife.

To the Commissioners of his Majesty's Navy.

County of } Whereas complaint on oath hath been made to us, two justices of the
peace acting in and for the county of by the churchwardens and
overseers of the poor of the parish of in the county of aforesaid, that
C. B. the wife of A. B. and their two children [name and age] have become charge-
able to the said parish of . And whereas it hath been made to appear before
us that the said A. B. is a seaman now serving in his Majesty's naval service, under
and by virtue of the several acts made for the prevention of smuggling, and that the
wages at which such seaman is rated in the ship's book are . We do therefore
certify, that we deem it necessary that out of the wages of the said A. B. one-third
[or one-half] of the same, amounting to shall be paid to the churchwardens
and overseers of the said parish for the relief of the same.

Given under our hands at in the said county, on the day of
in the year of our Lord one thousand eight hundred and thirty- .

L. M.
N. O.

p. 86.

53. Order by justices to overseers, &c. to receive seamen's wages for the indemnity of parishes.

To the Owner, Ship's Husband, or Agent of the Ship [or Vessel, as it may be].

County of } Whereas complaint on oath hath been made before us, two of his Ma-
jesty's justices of the peace acting in and for the county of by
to wit. } the churchwardens and overseers of the poor of the parish of T., in the
county of aforesaid, that C. B., the wife of A. B., and their two children, to
wit, [naming the children,] have become chargeable to the said parish of T. And
whereas it hath been made appear to us, that the said A. B. is now employed in the
actual service of N. O., on board the Ranger, on a voyage to the East Indies, and
not in his Majesty's service, and that, during his absence on such employment the
overseers of the said parish of T. have necessarily laid out and expended, in the
maintenance and relief of the wife and family of the said A. B., the sum of
We do, therefore, order and direct you, the said owner, &c. [as it may be,] forth-
with, on receipt hereof, to pay unto the churchwardens and overseers of the poor of
the parish of T. aforesaid, or to such one of them as shall demand the same, the said
sum of out of the wages which are, or shall become due to the said A. B., in
discharge of the said money so expended in the maintenance and support of the said
C. B., his said wife, and their said family; and the receipt of such churchwarden

or overseer shall be to you a good and sufficient discharge for the said sum of hereby directed to be paid for the purpose aforesaid.

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and thirty-

W. R. (L. S.)
E. R. M. (L. S.)

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dering of Poor.

p. 86.

To the Commissioners of the Affairs of the Royal Hospitals of Chelsea [or Greenwich, or the Secretary of the Board of Ordnance, as the case may be].

County of } Whereas, complaint on oath hath been made before us, two of his Ma-
to wit. } jesty's justices of the peace acting in and for the county of by
the churchwardens and overseers of the poor of the parish of T., in the
said county of that A. B., late of the said parish of T., hath left his wife and
family chargeable [or suffered them to become chargeable, as the case may be,] to
the said parish of T., and have verified the same on oath. And whereas it duly
appears unto us, that the said A. B. is entitled to receive of and from a certain
annual allowance or pension, amounting to and that no assignment of the said
pension hath been made by the said A. B. to the said churchwardens and overseers
for the support and maintenance of the wife and family of the said A. B.: Now the
said W. R. and E. R. M., the justices aforesaid, do hereby, in pursuance of the
statute in that case made and provided, order and direct that the next payment of the
said pension or allowance due to the said A. B. shall be paid by you, the said com-
missioners, &c. [as it may be,] to the churchwardens and overseers of the poor of the
said parish of T., or to one of them, to be by them retained and applied, in part or
in total, to the discharge of such sum or sums of money as they may have expended
in the support and maintenance of the wife and family of the said A. B., rendering
the overplus, if any, unto the said A. B., or to such other person as he shall duly
authorize to receive the same.

54. Order by
justices to over-
seers, &c. to re-
ceive pensions of
persons leaving
their families
chargeable to the
parish.
59 Geo. 3, c. 12.

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and thirty-

W. R. (L. S.)
E. R. M. (L. S.)

p. 84.

To all Constables, and others his Majesty's Officers of the Peace, for the county of of .

County of } Forasmuch as A. B., one of the overseers of the poor of the parish of
to wit. } in the said county, hath this day made information and complaint
upon oath before me one [or us and two] of his
Majesty's justices of the peace in and for the said county, that C. D., late of
in the said county, shoemaker, hath run away and left his wife and children, whereby
they are become chargeable to the said parish of and thereby committed an
act of vagrancy: These are, therefore, to command you, in his said Majesty's name,
forthwith to apprehend and bring before me the body of the said C. D., to answer
unto the said complaint, and to be further dealt withal according to law. Herein
fail you not.

55. Warrant to
apprehend a per-
son as a rogue
and vagabond,
having deserted
his family.

Given under my hand and seal [or our hands and seals], the day of in the year of our Lord one thousand eight hundred and thirty-

A. B. (L. S.)

p. 84.

County of } Be it remembered, that on the day of in the year of
to wit. } the reign of our sovereign lord George the Fourth, by the grace of God
of the United Kingdom of Great Britain and Ireland, king, defender
of the faith, and in the year of our Lord one thousand eight hundred and
A. B., constable of the parish of in the county of bringeth before me
W. R., esquire, one of the justices of our said lord the king, assigned to keep the
peace of our said lord the king, in and for the said county, and also to hear and de-
termine divers felonies, trespasses, and other misdemeanors in the said county, com-
mitted the body of C. D., and chargeth and accuseth him, the said C. D., before me,
the said justice, of being a rogue and vagabond, within the intent and meaning of
the statute made and passed in the seventeenth year of the reign of King George the

56. Conviction
and commitment
of a person as a
rogue and vaga-
bond, for having
deserted his fa-
mily.

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dering of Poor.

Second, intituled, "An Act to amend and make more effectual the laws relating to Rogues, Vagabonds, and other idle and disorderly persons, and to Houses of Correction," for that he, the said C. D., hath run away and left his wife and children, whereby they have become chargeable to the parish of _____ in the county aforesaid, contrary to the form of the statute in such case made and provided, and thereupon he, the said A. B., prayeth of me, the said justice, that the said C. D. may be dealt with according to the law for his said offence; whereupon the said C. D. is now asked by me, the said justice, if he can say any thing for himself, why he, the said C. D., should not be convicted of the offence above charged upon him, in form aforesaid, who pleadeth that he is not guilty thereof: Whereupon I, the said justice, do now proceed to examine into the truth of the complaint so brought by the said A. B. against the said C. D., and thereupon, on the day and year first aforesaid, at the parish of _____ in the county aforesaid, E. F., churchwarden of the parish of _____ aforesaid, and G. H., one of the overseers of the poor of the said parish of _____ credible witnesses in that behalf, on their corporal oath upon the holy Evangelists of God, now here duly administered to them respectively by me, the said justice, in the presence and hearing of the said C. D., depose and say, that the said C. D. hath run away and left his wife and _____ children, whereby they have become chargeable to the parish of _____ aforesaid, and he, the said C. D., having heard the said evidence, and being asked by me, the said justice, if he can say any thing for himself, or show any cause before me why he should not be convicted of the offence so charged upon him as aforesaid, doth not say any thing for himself, or offer any evidence to gainsay the same; therefore it manifestly appeareth to me, the said justice, that the said C. D. is guilty of the offence above charged upon him, in manner and form as in and by the said complaint is alleged, and that he is thereby a rogue and vagabond, within the true intent and meaning of the said statute. It is, therefore, adjudged by me, the said justice, that the said C. D. be convicted of the said offence, and he is hereby by me accordingly convicted of the said offence so charged upon him in and by the said complaint, and adjudged to be a rogue and vagabond within the intent and meaning of the statute aforesaid. And I do order the said C. D. to be sent, and the said C. D. is by me accordingly committed to the house of correction at _____ in the said county, there to remain until the next general quarter sessions of the peace to be held in and for the said county, then and there to be further dealt with according to law, unless he be sooner discharged by due course of law, according to the form of the statute in such case made and provided. In testimony whereof, I, the said justice, to this record of conviction have put my hand and seal, at _____ in the county aforesaid, on the day and year first above written.

W. R. (L. S.)

57. Commitment
of a person as an
incorrigible rogue
for having de-
serted his family a
second time.

To the Governor or Keeper of the House of Correction at
County of _____
to wit. } Receive into your custody the body of A. B. of _____ in the county of
_____ herewith sent you, brought before me W. R., esquire, one of his
Majesty's justices of the peace for the said county, and charged before
me by C. D. overseer of the poor of the parish of _____ upon oath with being an in-
corrigible rogue, for that he the said A. B. being adjudged a rogue and vagabond,
and thereof convicted by me the said W. R., and committed to the house of correction
for having deserted his wife and _____ children, and leaving them chargeable to the
said parish of _____ hath since the said conviction and commitment again deserted
his said wife and _____ children, and left them chargeable to the said parish of _____
by reason whereof he the said A. B. hath become an incorrigible rogue,
within the intent and meaning of the statute made and passed in the seventeenth
year of the reign of George the Second, intituled, "An Act to amend and make
more effectual the Laws relating to Rogues and Vagabonds, and to other idle and
disorderly Persons, and to Houses of Correction," of which offence he the said A. B.
hath been convicted by me the said justice, and him the said A. B. safely keep in your
custody until he shall be discharged by due course of law, and for so doing this shall
be your sufficient warrant.

Given under my hand and seal, this _____ day of _____ one thousand eight
hundred and _____ W. R. (L. S.)

58. Warrant to
aprehend a person
for not applying a
proportion of his
earnings towards
the maintenance
of his family.

To all Constables, and others his Majesty's Justices of the Peace for the said
county of _____ whom these may concern.
County of _____
to wit. } These are in his Majesty's name, to command you and every of you,
_____ upon sight hereof, to take and bring before me, or some other of his
Majesty's justices of the peace in and for the said county, city, and

liberty, the body of A. B., to answer to all such matters and things as on his Majesty's behalf are on oath objected against him by E. B., his wife, and also by C. D., one of the overseers of the poor of the parish of _____ for permitting, by his wilful default and neglect, his said wife and _____ children to become chargeable to the said parish, spending his money in ale-houses, and not employing a proper proportion of the money earned by him towards the maintenance of his said wife and children, against the statute in that case made and provided. Herein fail not at your peril.

Given under my hand and seal at _____ in the county aforesaid, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____ W. R. (L. S.)

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p. 83.

County of _____ } Whereas it appears unto us whose names are hereunto set and seals affixed, to wit. } two of his Majesty's justices of the peace for the said county, as well upon the complaint and application of the churchwardens and overseers of the poor of the parish of _____ in the said county as otherwise, that C. D., late of the parish of _____ aforesaid, yeoman, hath run away from his place of abode at _____ in the parish aforesaid, into some other county or place, and hath left his wife S. and his two children, M. aged three years, and P. aged two years or thereabouts, chargeable to the said parish of _____ the place of their last legal settlement [or where the said children were born]; and that the said C. D. hath an estate situate at _____ consisting of two freehold dwellings [or as it may be]: whereby to ease the said parish of the said charge, in whole or in part, we do hereby authorize and command you, the said churchwardens and overseers of the poor of the said parish of _____ to take and seize [describe the property] of his goods and chattels, and to receive so much in the sum of £ _____ of the annual rents and profits of the lands and tenements of him the said C. D. at _____ aforesaid, [if the order is to receive the rents of land, say, until further order made,] for and towards the discharging of the said parish for the providing for and bringing up of his said wife and children; and with this warrant you are to appear at the next quarter sessions of the peace to be holden for the said county, that this order may be then and there confirmed, according to the directions of the statute in that case made and provided.

59. Order to seize the goods and receive the rents of houses or lands, of persons deserting their families.

Given under our hands and seals at _____ in the said county, the _____ day of _____ one thousand eight hundred and thirty _____

W. R. (L. S.)
E. R. M. (L. S.)

p. 72.

to wit. } A. B., of _____ in the parish of _____ in the county of _____ labourer, maketh oath that he is very poor and impotent and not able to work, and not able to provide for himself and his family, and that therefore he, the said A. B., on the _____ day of _____ last, did apply for relief to C. D. and E. F., overseers of the poor of the said parish, and was by them refused to be relieved.

60. Usual form of oath by a pauper requiring relief.

A. B.

Taken and made before me, G. H., one of his Majesty's justices of the peace for the said county of _____ the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one.

pp. 73, 284.

County of _____ } To the Churchwardens and Overseers of the poor of the Parish of _____ in the County of _____

Whereas S. S., esquire, one of his Majesty's justices of the peace for the said county, did, on the complaint of the churchwardens and overseers of the poor of the parish of H., in the county of Y., issue a summons under his hand and seal, dated the _____ day of _____ instant, and directed to the churchwardens and overseers of the poor of the parish of D., in the said county of S., thereby requiring them, or some or one of them, to appear before him, and such other of his Majesty's justices

61. Order of two justices upon the churchwardens and overseers of D., for maintenance of a poor child settled in D., but residing with its mother in H. for nurture.

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of the peace for the said county of _____ as should be at _____ in _____ in the same county, this day at _____ o'clock in the forenoon, to show cause why an order should not be then and there made for the payment, by the same churchwardens and overseers of the poor of the parish of D., of a weekly sum to the said churchwardens and overseers of the poor of the parish of H., for the maintenance of A. B., a bastard, born in the said parish of D., and then resident in the said parish of H. as a nurse-child with his mother, M. B.: And whereas A. O., one of the overseers of the poor of the said parish of D., having appeared before us, S. S. and R. C., esquires, two of his Majesty's justices of the peace for the said county of _____ in pursuance of the before-mentioned summons for that purpose, hath not showed to us any sufficient cause why an order should not be made upon them, the said churchwardens and overseers of the poor of the said parish of D., to pay a weekly sum to the said churchwardens and overseers of the poor of the said parish of H., towards the maintenance of the said bastard child [or, And whereas it hath been duly proved to us, upon oath, that the said churchwardens and overseers of the poor of the said parish of D., have been duly summoned to appear before us, the said justices, to show cause why an order should not be then and there made; but they or any of them have not appeared in pursuance thereof, and have not showed to us any sufficient cause why the said order should not be made:] And whereas the said M. B., in and by her examination taken in writing and upon oath this day, before us, the said justices, hath deposed that she was delivered of the said A. B. in the said parish of D., who was born a bastard there, and is now of the age of _____ years or thereabouts; that he the said A. B. is now chargeable to the said parish of H., and that she the said M. B. is not willing to part with her said child until he attains the age of seven years: Now, in consideration thereof, and on the complaint of the churchwardens and overseers of the poor of the said parish of H., we do hereby order the said churchwardens and overseers of the poor of the said parish of D., or some of them, to pay to the said churchwardens and overseers of the poor of the said parish of H. the sum of _____ weekly and every week, for and towards the support and maintenance of the said A. B., as long as the said A. B. shall be chargeable to the said parish of _____ and shall not have arrived at the age of seven years, or until they shall be ordered according to law to forbear the said allowance.

Given under our hands and seals at _____ aforesaid, the _____ day of _____ one thousand eight hundred and _____

S. S. (L. S.)
R. C. (L. S.)

p. 72.

62. Usual form of a justice's summons on two overseers, to show cause why they do not afford relief.

To the Constable of _____ in the parish of _____ in the said county, and to wit. } to every of them.

Whereas A. B., of your parish, hath this day made oath before me, G. H., one of his Majesty's justices of the peace in and for the said county, that he, the said A. B., is very poor and impotent, and not able to work, and not able to provide for himself and his family, and that he, the said A. B., did on _____ last apply to C. D. and E. F., overseers of the poor of the said parish, and was by them refused to be relieved: These are, therefore, to require you, in his Majesty's name, to summon two of the overseers of the poor of the said parish to appear before me, on _____ next, at _____ in the said county, at the hour of _____ in the forenoon of the same day, to show cause why relief should not be given to the said A. B. And be you then there with this precept, to certify what you shall have done in the execution hereof.

Given under my hand and seal, the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-_____

G. H. (L. S.)

p. 4.

63. Comprehensive form of order of relief by a justice, which can be granted only where the parish has no select vestry or guardians.

To the Churchwardens and Overseers of the Poor of the parish of Essex, to wit. } in the said county.

Whereas A. B., of the parish of Barking, in the said county, labourer, hath made oath before me, one of his Majesty's justices of the peace for the said county, that he, the said A. B., is very poor and impotent, and not able to work, and not able to provide for himself and his family, and that he, the said A. B., did, on the _____ day of _____ last, apply for relief to C. D. and E. F., overseers of the poor of the said parish, and was by them refused to be relieved. And whereas two of the overseers of

the poor of the said parish have been duly summoned by us to show cause why relief should not be given to the said A. B.

And whereas [stating special grounds of relief] we do therefore order the churchwardens and overseers of the poor of the said parish, or such of them to whom these presents shall come, to pay unto the said A. B. the sum of shillings and pence, weekly and every week, for and towards his support and maintenance, for one month from the day of the date hereof.

Given under our hands and seals, this day of in the year of our Lord
one thousand eight hundred and thirty- .

G. H. (L. S.)
I. K. (L. S.)

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dering of Poor.

To the Churchwardens and Overseers of the parish of .

London, } You are hereby summoned personally to appear before me, or some other
to wit. } of his Majesty's justices of the peace for the said city and liberties
thereof, at the Lord Mayor's justice room, at the Mansion House, on next, at
eleven of the clock in the forenoon, to answer the complaint of G. H., and to show
cause why you refuse to relieve him, the said A. B., being one of your poor, and in
great distress. And hereof fail not, as you will answer the contempt.

Given under my hand, this day of in the year of our Lord one thou-
sand eight hundred and thirty- .

A. B. (L. S.)

64. Summons in
London for not
relieving a pau-
per.

County of } To the Churchwardens and Overseers of the Poor of the parish of T.,
to wit. } in the county of .

Whereas A. B. hath this day complained to me, W. R., esquire, one of his Ma-
jesty's justices of the peace in and for the county of that he is very poor, and
unable to provide for himself and his family, and that he hath applied to you for
relief, and that you have refused to relieve him: These are therefore, in his Majesty's
name, to require you to relieve the said or personally to be and appear before
me, or such other of his Majesty's justices of the peace for the said county, as shall
be then and there sitting at the public office aforesaid, on next, at
o'clock in the noon, to show cause, if you can, why such relief should not be
given to the said .

Given under my hand and seal, on the day of one thousand eight
hundred and thirty- .

W. R. (L. S.)

65. Summons
upon overseers to
show cause why
they refuse relief
to a poor person.

p. 72.

County of } To the Churchwardens and Overseers of the Poor of the parish of T., 66. Another form.
to wit. } in the said county.

Whereas complaint has been this day made unto me, W. R., esquire, one of his
Majesty's justices of the peace in and for the said county, upon oath by A. B., of
your said parish of T., that he is very poor and impotent, and utterly unable to pro-
vide for himself, and that he hath applied to you for relief, which you have refused
to grant him: These are, therefore, to require you forthwith to appear before me, or
some other of his Majesty's justices of the peace at together with the said
to show cause why you refuse him [or her] relief, or otherwise that you pay and
allow unto the said A. B. the sum of weekly and every week, towards his [or
her] support and maintenance, (unless you receive and maintain him in the work-
house of your said parish,) until such time as you may, according to law, forbear
the said allowance or maintenance.

Given under my hand and seal the day of in the year of our Lord
one thousand eight hundred and thirty- .

W. R. (L. S.)

IV. Forms
relating to the
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dering of Poor.

67. Summary re-
quest for over-
seer to admit to
workhouse.

Sir,
A pauper of your parish having applied to me for relief, you are requested to give A. B. relief by an order of admission to the workhouse or otherwise, or else you attend at to show cause to the contrary, this day at o'clock.

To Mr. E. F., one of the
overseers of the poor of
the parish of in
the county of

I am, Sir,
Your obedient servant,
W. R.,
Magistrate.

68. Order of one
justice, in case of
urgent necessity,
for temporary re-
lief.

County of } To the Churchwardens and Overseers of the Poor of the Parish of T.,
to wit. } in the County of

Whereas complaint hath been this day made unto me, A. B., esquire, one of his Majesty's justices of the peace in and for the said county, upon oath by G. H. of your parish, that he is very poor and impotent and utterly unable to provide for himself, and that he hath applied to you for relief, which you have refused to grant, and that he is in danger of perishing for want of immediate assistance: These are therefore, this being a case of urgent necessity, from the said G. H. being in danger of perishing for want of immediate assistance and relief, to order and require you to grant to him the said G. H. relief in articles of such absolute necessity as the case requires. (a)

A. B.

p. 5.

69. Order for me-
dical relief only,
in a case of sudden
and dangerous ill-
ness.

County of } To the Churchwardens and Overseers of the Parish of A., in the County
to wit. } of

Whereas complaint hath been made to me A. B., one of the justices of the peace in and for the county of aforesaid, that G. H., of your parish [or whose place of settlement is in your parish, but who is dwelling now in the parish of M.] a poor and impotent man, and unable to provide for himself, is afflicted with a sudden and dangerous illness: These are therefore, this being a case of urgent necessity, to order and require you to provide proper and necessary medical relief for the said G. H.

A. B.

70. Common
order of two jus-
tices on two over-
seers, to give re-
lief to a poor
person, where
there is no select
vestry under
59 Geo. 3, c. 12,
s. 5.

County of } To the Churchwardens and Overseers of the Poor of the Parish of T.,
to wit. } in the County of

Whereas A. B. made oath before us, L. M. and N. O., esquires, two of his Majesty's justices of the peace in and for the said county, that he [or she] the said A. B., together with C. and D., his [or her] children, are inhabitants of Orchard Street, in the said parish, and that he is [or they are] poor and impotent and unable to work, and in distress and in need of relief, and that he [or she] applied to E. F. and G. H., two of the overseers of the said parish of T., and was by them refused to be relieved: And whereas the said E. F. and G. H., overseers of the said parish, having been duly summoned to appear before us at at of the clock, this day of to show cause why the said A. B., together with the said should not be relieved,

(a) The justices cannot specify the relief. See p. 4, n. (a).

except "on sudden and emergent occasions." 9 Geo. I. c. 7, s. 1.

p. 4.

Where overseer may relieve without
an order.

pp. 4, 62.

Wherever a select vestry or a board of guardians is established, the overseer can afford no relief, except in cases of "sudden and urgent necessity," and then in articles of absolute necessity only; 4 & 5 Will. IV. c. 76, s. 54.

If the parish is not under the manage-
ment of a select vestry or board of guar-
dians, then the overseer can give no re-
lief except by the order of a justice, or

Where a justice may order relief.

Where the parish is governed by a select vestry or board of guardians, a justice can order no relief except when the overseer neglects to give relief in cases of sudden and urgent necessity, and then only temporary relief in articles of absolute necessity, &c.; and a justice is also empowered to give an order for medical relief only in cases of sudden and dangerous illness. Where the parish is not under any such government, then one justice may order relief under the 9 G. I. c. 7.

as by law is provided, no where duly appear before us : and whereas we the said L. M. and N. O., two of his Majesty's said justices of the peace for the said county, having duly heard the said parties, do adjudge, as well upon the oath of the said A. B. as otherwise, that the said A. B., together with his [or her] said children, ought to be relieved by the churchwardens and overseers of the poor of the said parish, and that there is special cause for granting relief to the said A. B. and the said children, to wit, that he, the said A. B., is very poor and impotent and not able to work or provide for himself or his said family, and has been refused adequate relief by the said E. F. and G. H.; and also that he, the said A. B., together with his [or her] children, are in such distress for want of other means of subsistence as to require relief from the said parish, we, the said L. M. and N. O., having also taken into consideration the character and conduct of the said A. B., do hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay or cause to be paid, unto the said for and towards his [or her] support and maintenance, the weekly sum of for the space of weeks, now next ensuing, the first payment to be made forthwith on the service of this order, and the second payment on the first day of the said second week, unless you shall be ordered according to law to forbear such second weekly allowance.

Given under our hands and seals at this day of one thousand eight hundred and thirty-six.

L. M. (L. S.)
N. O. (L. S.)

p. 63.

County of }
to wit. } To the Constable of in the said County, and to every of them.

71. Summons for master and servant, for re-payment of loan, under 4 & 5 Will. 4, c. 76, s. 58.

Whereas complaint hath been made to me, one of the justices of the peace for the county of by A. B., guardian of the poor of the parish of in the said county, and it hath been duly proved before me that C. B., a poor person, in the service and employment of F. G., has received the sum of £ as relief, by way of loan from the said parish, and that £ of the same remains due; these are to require you in his Majesty's name to cause the said C. B. and F. G. to appear before me and one other of his Majesty's justices of the said county, on the next, at the house of in in the said county, at the hour of forenoon of the same day, to show cause why the wages now due, or which may become due from the said F. G. to the said C. B. should not be paid to such guardians in satisfaction of the said sum so remaining due.

Given under my hand, this day of Justice.

p. 62.

County of }
to wit. } To C. D. [the pauper] and E. F. [the master] of the parish of

72. Order for the re-payment of loan.

Whereas A. B., one of the guardians of the poor of the parish of on the day of last, appeared before one of his Majesty's justices of the peace in and for the said county, and complained that you C. D. had received the sum of £ as relief by way of loan, from the said parish, and that the sum of £ of the same still remains due: that the said C. D. was in the employment of E. F. at certain weekly wages: and whereas the said C. D. and E. F. have been duly summoned, in pursuance of the statute in such case made and provided, to appear before us at o'clock this day, to show cause why the wages now due, or which may become due from the said E. F. to the said C. D., should not be paid to such guardian, in satisfaction of the said sum of £ so remaining due: and whereas we the being two of his Majesty's justices of the peace in and for the said county, having duly heard the said parties, in the presence and hearing of each other [or in the presence and hearing of the said E. F., the said C. D., although duly summoned, not appearing, or any one on his behalf], and it having now been duly proved to our satisfaction that the sum of £ was on the day of 1836, given by and on behalf of the said parish of to the said C. D., as relief by way of loan, and that the sum of £ now remains due and owing, and that the sum of £ is now due to the said C. D. from the said E. F. as

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wages [or that C. D. is in the employment of E. F., and entitled to the weekly sum of £ as wages], and having considered the circumstances of the said C. D., do, in pursuance of the statute in such case made and provided, adjudge, order, and direct that the said E. F. shall, out of the wages so due to the said C. D., pay unto the said A. B., as such guardian, the sum of £ and shall hereafter, on the Saturday in every week, out of the wages becoming due to the said C. D., pay the sum of shillings to the said guardian, so long as the said C. D. shall be in the employ of the said E. F., and until the said sum of £ aforesaid, now due from the said C. D., shall be paid.

Given under our hands this day of

L. M.
N. O.

p. 34.

73. Appointment
of select vestry,
under 59 Geo. 3,
c. 12.

Whereas in and by the statute made and passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled, "An Act to amend the Laws for the relief of the Poor," it is enacted, that it shall be lawful for the inhabitants of any parish, in vestry assembled, to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect in any vestry such and so many inhabitant householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is thereby authorized and required to make): And whereas information is made and given on this day of in the year of our Lord one thousand eight hundred and thirty unto us, J. C. and S. P., esquires, whose hands and seals are hereunto subscribed and set, being two of his Majesty's justices of the peace in and for the said county of that the inhabitants of the parish of in the said county, have nominated and elected, in manner aforesaid, twenty substantial householders and occupiers within the said parish, whose names are hereinafter mentioned, to be members of a select vestry for the concerns of the poor of the said parish, we therefore, by virtue and in pursuance of the authority and requisition aforesaid, do hereby appoint the following substantial householders and occupiers, that is to say,

A. B. Minister,
C. D. } Churchwardens,
E. F. }
G. H. } Overseers of the Poor.
I. K. }
L. M.
N. O. &c. [not exceeding twenty-five.]

to be and constitute a select vestry for the care and management of the concerns of the poor of the said parish of in the said county, to continue and be empowered to act therein from the time of this appointment until fourteen days after the next annual appointment of overseers of the poor of the said parish shall take place.

Given under our hands and seals at in the said county, the day and year above written.

J. C. (L. S.)
S. P. (L. S.)

74. Form of con-
sent and approba-
tion of the justices,
prescribed by
Gilbert's act, 22
G. 3, c. 83, sched.
No. II.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of considering the parish of within the said county, to be of magnitude sufficient to have a workhouse provided within it for the reception and employment of the poor, and to adopt the provisions of the act "for the better relief and employment of the poor," passed in the twenty-second year of the reign of King George the Third, do hereby give approbation and our consent thereto, pursuant to the directions of the said act, and we do also agree to the salaries fixed by the said agreement to be paid to the guardian and governor.

Given under our hands this day of one thousand eight hundred and

A. B.
C. D.

p. 67.

At a public meeting of the inhabitants of the parish of T. in the county of _____ for that purpose assembled, upon usual notice thereof first given, it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between _____ and _____ churchwardens and _____ and _____ overseers of the poor of the parish of the one part, and _____ of _____ in the said parish, yeoman, of the other part, That he the said _____ shall and will, during the space of one whole year, to commence from _____ next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people as shall be lawfully entitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens and overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance, and that, in consideration thereof, the said churchwardens and overseers of the poor and their successors respectively, shall pay or cause to be paid to the said _____ the sum of _____ in equal proportions, the said _____ to have moreover and take unto himself the benefit of the said poor people's work, labour, and service, during the said term.

In witness whereof the parties to these presents have hereunto set their hands the day of _____

[If two parishes or townships joined in the contract, under 43d Geo. III. c. 54, ante, 67, it was necessary to insert in the contract the consent of the two justices, thus—"by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of A. B. and C. D., esquires, two of his Majesty's justices of the peace for the said county, dwelling in the said parish of _____ [or near to the said parishes or townships of _____]]"

[The assent of the justices may be indorsed thereon as follows—"We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the within mentioned county of _____ and dwelling in the within mentioned parish of _____ [or near to the within mentioned parishes or townships of _____] do consent unto, allow, and approve of the within written contract."]

Given under our hands and seals, the _____ day of _____

A. B. (L. S.)
C. D. (L. S.)

p. 9.

It is agreed at a public meeting duly held this _____ day of _____ at _____ in the county of _____ pursuant to the directions of the said act, That the parish [or township] of _____ [as the case may be] shall, from henceforth, in conjunction with the parishes or townships of _____ and _____ [as it may be] adopt, in all respects, the provisions, rules, orders, and regulations, and comply with all the requisites prescribed by the said act, for parishes uniting for those purposes, and that a convenient workhouse and other buildings and necessary conveniences shall be immediately provided at or near _____ and properly fitted up and accommodated for the purposes mentioned in the said act. And we recommend to the consideration of the justices of the limit wherein such workhouse will be situate _____ as fit and proper persons qualified for guardians of the poor, and _____ as fit persons to be governors of the poor-house for the said parish [or township, as the case shall be] and do agree to allow the person who shall be appointed guardian, a salary of _____ per annum, for his trouble in executing that office, and to the person who shall be appointed governor of the workhouse, a salary of _____ per annum, for his trouble in executing that office.

76. Agreement, at a public meeting, for two or more parishes, townships, &c., to unite in adopting the provisions of Gilbert's act, 22 G. 3, c. 83.(b)

It is agreed this _____ day of _____ by and between the guardians of the poor of the parish of _____ and _____ and of the townships of _____ and _____ in the county of _____ (which maintain their own poor separate and distinct from the other parts of their respective parishes), whose names are hereunto subscribed, pursuant to the opinion of two-thirds in number and value of the owners or occupiers of lands, tenements, and hereditaments assessed to the poor's rates within such respective parishes and townships, at meetings duly held for that purpose, qualified according to the directions of the act passed in the twenty-second year of the reign of his Majesty

77. Agreement for uniting the parishes [or townships, as the case may be] of _____ and _____ for the purpose of providing a house or houses, and for the better main-

(a) The act requires the approbation of two justices.

(b) This form is prescribed by the schedule of the act, No. III. (See ante, 216.)

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75. Contract for maintenance, under 9 G. 1, c. 7, s. 4.

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dering of Poor.

taining and em-
ploying their poor,
pursuant to Gil-
bert's act, 22 Geo.
3, c. 83. (a)

King George the Third, and with the approbation of W. R. and E. R. M., two of his Majesty's justices of the peace, according to the directions of the said act, That the said respective parishes and townships shall be united for the better maintaining and employing their poor, and that a convenient house or houses, with proper buildings and accommodations thereto, and with land fit for gardens, orchards, and the keeping of a cow or cows, shall be built [purchased or hired, as shall be found most suitable,] at or near _____ for the reception and accommodation of the poor, as soon as conveniently may be, and if hired the same shall be rented upon such terms as shall be agreed upon between the guardians of the poor of the said several parishes and townships, or the major part of them, and the person or persons owning or being authorized to let such building, lands, and premises, but no such agreement shall be made for any longer lease than twenty-one years, unless the guardian or guardians shall have an option to vacate it at the end of that term on giving twelve months' notice in writing of his or their intentions so to do, nor for a shorter term than three years; and such houses shall be fitted up and made convenient for the purposes aforesaid, at the expense of the landlords [or tenants, as shall be agreed to by them]. That the rents of the said houses, the expenses of fitting up, making additions or alterations [where they shall be agreed to be paid by the tenants], and of the furniture thereof, and also the utensils and materials to be used for the purpose of employing the poor, and the wages and allowances to be paid to the governor of the house, shall be paid by the said several guardians in their due proportions, according to the amount of the money raised by the poor's rate for their several parishes and townships, in respect of their poor, on a medium of three years preceding such agreement; and that such proportions shall be ascertained by _____ and _____ whom we have nominated for that purpose, and shall be paid by the guardians of the poor of the said respective parishes and townships to the persons who shall be authorized to receive the same, within seven days after the same shall be so ascertained, and that the money earned by the labour shall be brought to the credit of that account at the end of every year. That the expenses of victuals, beer, and firing for the poor, and the governor [and for the assistants, when any shall be found necessary] in every such house or houses, with all other small incidental expenses, shall be proportioned, at the end of every month, according to the number of poor which shall be sent from each of the said respective parishes, townships, and places, and for the term they shall have resided there within such month, that the guardians of the poor of any of the said parishes, townships or places, shall be at liberty to withdraw from this agreement at the end of the first three years, or any succeeding three years, on giving twelve months' notice of such their intentions, if it shall be so determined by [three-fourth parts] of the owners or occupiers of lands, tenements, or hereditaments, assessed to the poor's rates, and qualified as aforesaid, at a public meeting summoned by due notice as aforesaid, specifying the occasion of such meeting; and in such case they shall receive one-half of their due proportion, to be ascertained by the persons last above-named, or such other persons as the parties shall agree upon for that purpose, of the value of the furniture, stock, utensils, and implements, then remaining at such poor-house after paying their proportion of the rent, and of the salaries to the governor and other officers, to the end of the then growing year. And that the guardian of the poor of such parish, township, and place, shall provide suitable and convenient clothing for the poor, to be sent to the said house or houses from their respective parishes, townships, or places, and charge the expenses thereof in their accounts. And we recommend to the justices of the limit where such house is to be situated, _____ as persons duly qualified for the office of visitors of the said poor-house, and _____ as persons duly qualified for the office of governors of the said poor-house. We, A. B. and C. D., the justices of the peace mentioned in the within written agreement, do hereby give our approbation to the parishes and places herein-named being united for the purposes of the act within-mentioned.

Witness our hands, this _____ day of _____ A.D. 1831.

A. B.
C. D.

78. The entry to be made by the clerk of the peace or town clerk. (See form, Gilbert's act, 22 Geo. 3, c. 83, schedule) No. 5.

Be it remembered that on the _____ day of _____ A. B. deposited in my hands a copy of the agreement made between the churchwardens and overseers of the poor, of the parishes or townships of _____ and _____ [as the case shall be] in the county, &c.

(a) This form is prescribed by 22 Geo. III. c. 83, schedule, No. 4.

[as the case may be] of for uniting in hiring, purchasing, or building houses at or near in the same county of and providing for the maintenance and employment of a certain description of poor persons belonging to the said parishes, townships, and places, pursuant to the statute made in the twenty-second year of the reign of his Majesty King George the Third.

IV. Forms relating to the Relief and Ordering of Poor.

Notice is hereby given, that a public meeting to consult the owners or occupiers of lands, tenements, or hereditaments, assessed after the rate of five pounds per annum, about providing for the maintenance and employment of the poor, pursuant to the statute of the twenty-second year of the reign of King George the Third, will be held in the vestry-room of this parish, on the day of at o'clock in the afternoon.

70. Notice of the meeting to consult as to providing for the poor, under Gilbert's act, 22 Geo. 3, c. 83, schedule No. 6.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of acting for the hundred of in the said county, do hereby appoint to execute the office of guardian of the poor, for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended at a public meeting, holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of his Majesty King George the Third, "for the better relief and employment of the poor."

71. Appointment of a guardian of the poor. (See Gilbert's act, 22 Geo. 3; c. 83, schedule, No. 7.)

Given under our hands this day of one thousand eight hundred and thirty one.

A. B. (L. S.)
C. D. (L. S.)

p. 47.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of visitor of the poor for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended, at a public meeting holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of King George the Third, "for the better relief and employment of the poor."

72. Appointment of a visitor of the poor. The form is prescribed by 22 Geo. 3, c. 83, schedule No. 7.

Given under our hands this day of one thousand eight hundred and thirty-one.

A. B.
C. D.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of governor of the poor, for the parish of in the said county, within the said hundred for one year, to be computed from to which he has been recommended at a public meeting, holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of King George the Third, "for the better relief and employment of the poor."

73. Appointment of a governor of the poor. Prescribed by 22 G. 3, c. 83, schedule, No. 7.

Given under our hands this day of one thousand eight hundred and thirty-one.

A. B.
C. D.

p. 48.

We, A. B. and C. D., esquires, two of his Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of treasurer of the poor for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended by the guardians, pursuant to the di-

74. Appointment of a treasurer of the poor. Form prescribed by the statute, schedule, No. 7.

IV. Forms relating to the Relief and Ordering of Poor.

rections of the act passed in the twenty-second year of the reign of King George the Third, "for the better relief and employment of the poor."

Given under our hands this day of one thousand eight hundred and thirty-one.

A. B.
C. D.

75. Draft by the guardian, on the churchwardens and overseers appointed to collect the poor's rates, under Gilbert's act, 22 Geo. 3, c. 83, schedule, No. 8.

To A. B., Collector of the poor's rates for the parish of in the county of

You are hereby authorized and directed to pay C. D. [describe what for] and take his receipt for the same, which will be your discharge for such payment.

Dated this day of

E. F. { Guardian of the poor for
the parish aforesaid.

p. 48.

76. Appointment of a deputy visitor. Form prescribed by 22 Geo. 3, c. 83, schedule, No. 9.

I, A. B. Visitor of the poor and poorhouse for the parish of in the county of do hereby nominate and appoint C. D. of to be my deputy-visitor and assistant during my will and pleasure, pursuant to the power given to me by an act passed in the twenty-second year of King George the Third, intituled "An Act for the better relief and employment of the poor," and authorize him to discharge the duty required of him by the said act.

Witness my hand this day of one thousand eight hundred and thirty-one.

A. B.

p. 48.

77. Certificate of serving the office of visitor of the poor, under Gilbert's act, 22 Geo. 3, c. 83, schedule, No. 10.

I, A. B., one of his Majesty's justices of the peace for the county, &c., [as the case may be], of do hereby certify that of in the said county, hath been appointed to and is now serving the office of visitor of the poor for the parish or township of [or, for the parishes and townships of] in the said county, [as the case may be], pursuant to directions of the act passed in the twenty-second year of the reign of his Majesty King George the Third.

Dated this day of one thousand eight hundred and thirty-one.

A. B.

p. 67.

78. Security for money borrowed for purchasing lands, &c., for the employment of the poor, under Gilbert's act, 22 Geo. 3, c. 83, schedule, No. 11.

By virtue of an act made in the twenty-second year of the reign of his Majesty King George the Third, intituled "An act for the better relief and employment of the poor," we visitor and guardian of the poor for the parish [or township as the case may be], of in the county, city, &c., of in consideration of the sum of to us in hand paid by of for the purpose of purchasing lands, buildings, erecting, repairing, fitting up or furnishing, &c., [as the case may be], a convenient house or building and offices for the reception, accommodation and employment of the poor of the said parish or township, and for providing suitable stock and utensils for that purpose, do hereby charge the poor's rates to be hereafter made, and the several sums of money to be raised thereupon within the said parish [or township, as the case shall be], with the payment of the said principal sum and interest, after the rate of per cent. per annum, half yearly as the same shall become due.

Witness our hands this day of one thousand eight hundred and thirty-one.

79. Transfer of the security for the money advanced. Gilbert's act, 22 Geo. 3, c. 83, schedule, No. 14.

I do transfer this security, with all my right and title to the principal money hereby secured, and to all interest now due, or hereafter to be due, unto his executors, administrators, and assigns. Dated this day of

Witness,

E. F.

A. B.

p. 49.

County of } At a special session, held at in the county of this
to wit. } day of one thousand eight hundred and by justices
 } of the peace for the said county, acting for the hundred of
 } within the said county.

IV. Forms
relating to the
Relief and Or-
dering of Poor.

80. Workhouse
governor's ap-
pointment.

Upon the application of the major part of the overseers of the poor of the parish of in the said county and hundred, to us whose hands and seals are hereunto affixed, being justices of the peace acting in and for the aforesaid county and hundred, we do hereby appoint keeper of the workhouse of the said parish of to be governor thereof; and so long as the said shall continue keeper of the said workhouse, until the justices, in any special sessions, shall revoke this appointment, he is hereby authorized to use and exercise the powers and perform the duties vested in and imposed upon governors of the poor, by an act passed in the twenty-second year of the reign of King George the Third, according to an act passed in the fiftieth year of the reign of the same king.

Given under our hands and seals, the day and year above written.

A. B. (I. S.)
C. D. (L. S.)

pp. 49, 56.

To the Governor of the Poorhouse at in the county of

You are hereby ordered and required to receive aged [state whether married or single] a poor person belonging to the parish of in the county of into the poorhouse of and to accommodate and provide for such person in a proper manner, according to the rules and establishment of the said house.

81. Order for the admission of a pauper into the poorhouse. Prescribed by 22 Geo. 3, c. 83, schedule, No. 12.

Given under my hand this day of one thousand eight hundred and thirty one.

A. B. Visitor, [or Guardian, as the case may be].

I, A. B., a justice of the peace for the county [riding, division, &c., as the case shall be,] of having received proof upon oath before me, that a poor person receiving weekly relief from the parish, &c. [as the case shall be,] of is a person of very decent and orderly behaviour, do hereby direct the guardian [or, overseer, if no guardian,] of the said parish, &c. to omit putting the badge upon the coat, [or, gown, if a female] of the said and to excuse his [or, her] wearing the same as long as he [or, she] shall continue to behave orderly and decently.

82. Justice's direction to excuse a poor person wearing the badge. Gilbert's act, 22 Geo. 3, c. 83, schedule No. 13. (a)

Dated this day of

A. B.

p. 50.

[See also 15 and 16, printed in schedule, 22 Geo. III. c. 83, and Chitty's Col. Stat. 815, directing the modes of adjusting the parish accounts, and the orders and by-laws to be observed in poor-houses.]

County of } To the Governor or Keeper of the House of Correction at in the
to wit. } County of , or his Deputy.

83. Commitment of a pauper, maintained in a workhouse, for disorderly conduct, under 55 Geo. 3, c. 137, s. 5.

Receive into your custody the body of G. H., herewith sent you, brought before me, A. B., esquire, one of his Majesty's justices of the peace in and for the said county, charged and convicted before me, the said justice, upon the oath of C. D., master or governor of the workhouse of the parish of of having been guilty of an offence against a certain act of parliament made and passed in the fifty-fifth year of his late Majesty King George the Third, intituled "An Act to prevent Poor Persons in Workhouses from embezzling certain Property provided for their Use," to alter and amend so much of an act of the thirty-sixth year of his present Majesty, as restrains

(a) A subsequent act prohibits a badge in any case.

IV. Forms relating to the Relief and Ordering of Poor.

justices of the peace from ordering relief to poor persons in certain cases for a longer period than one month at a time, and for other purposes therein mentioned relating to the poor; that is to say, for that he, the said A. B., being a person maintained in a certain public workhouse established for the relief, maintenance, and employment of the poor, to wit, the workhouse of the parish of _____ in the said county, did on the _____ day of _____ refuse to work at a certain work, occupation, or employment, suited to his age, strength, and capacity, to wit [state the particular facts, or that the said G. H. was on the _____ day of _____ guilty of drunkenness], against the statute in that case made and provided, and him therefore safely keep in your safe custody, without bail or mainprize, to hard labour for the space of [any time not exceeding twenty-one days], and for so doing this shall be your sufficient warrant.

Given under my hand and seal, at _____ in the county aforesaid, this _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-six.

A. B. (L. S.)

84. Commitment of a person for misbehaviour in a workhouse, under 50 Geo. 3, c. 50, s. 5.

County of _____ } To the Governor of the House of Correction, Cold Bath Fields, or to
to wit _____ } his Deputy.

Receive into your custody the body of G. H., herewith sent you, brought before me, A. B., esquire, one of his Majesty's justices of the peace in and for the said county, by _____ and charged and convicted before me, the said justice, upon the oath of _____ for that he the said G. H., being a person maintained in a public workhouse, to wit, the workhouse of _____ and in the parish of _____ in the said county of _____ established for the relief, maintenance, and employment of the poor, was on the _____ day of _____ guilty of [drunkenness] and other misbehaviour in the said workhouse, against the statute, &c.: And the said G. H. having been thereof lawfully convicted before me, the said justice, of the said offence: Therefore the said G. H. safely keep in your said custody, there to remain, without bail or mainprize, for the space of [any time not exceeding twenty-one days], and during such time to be kept to hard labour, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____ one thousand eight hundred and thirty-six.

A. B. (L. S.)

V. Forms relating to Overseers' Accounts, &c.

V. Forms relating to Overseers' Accounts, &c.

85. Account book of workhouse poor.

An Account of all Paupers admitted into Workhouse.

Names.	Age	When admitted.	Reason why.	By whose Order.	Discharged	Why.	Discharged by whose Order.	Remarks
Adkins, John	51	21 Feb. 1836	{ Suddenly dangerously ill }	{ Overseer A. B. }	17 Oct. 1836	Recovered	{ Overseer A. B. }	Still weak and requires relief as an out-door pauper.
Armstrong, Thos.	44	8 Mar. 1836	{ Broke a leg by fall from horse }	{ Overseer C. D. }	25 Sep. 1836	Recovered	{ Overseer C. D. }	

Another Book called "Workhouse Book" kept in London.

V. Forms relating to Overseers' Accounts &c.

Ward, No. 1.	Names of Paupers.	1830. Times of being in the house are denoted by the				
		Jan. 1.	Jan. 2.	Jan. 3.	Jan. 4.	&c. &c.
	Adams, James					
	Alderson, Jno.					
	Annesley, Thos.					
	&c. &c. &c.					

86. Workhouse book.

Clerks' Hall, Wood-street, December, 1830.

To the Churchwardens and Overseers of the Poor, or Vestry Clerks.

Whereas by an act of parliament passed in the second year of the reign of his late Majesty King George the Third, intituled, "An Act for the keeping regular, uniform, and annual registers of all parish poor infants under a certain age within the bills of mortality;" and also by another act, passed in the seventh year of his late Majesty, intituled, "An Act for the better regulation of the parish poor children of the several parishes therein mentioned, within the bills of mortality," it is enacted, That the respective churchwardens and overseers of the poor of the said parishes shall keep a register book ruled and headed on each page, agreeable to the schedules annexed to the said acts, of all infants under their care, from their birth or time of admission into the workhouses or parish houses, until apprenticed out or otherwise discharged; and that, at the expiration of each year, the names of all such children as are then remaining under their care shall be transferred to the register of the next year, under their proper dates and description in which they stand in the preceding register, previous to any further entry; so that the register of each year shall contain a full and distinct account of the whole number of parish poor children under their care in the course of the year, without being intermixed with the deaths or discharges of any of the preceding years. And also, that exact copies of such registers, ending the thirty-first of December in every year, shall be transmitted to the master and wardens of the company of parish clerks, on or before the fifteenth day of February following.

87. Notice requiring churchwardens, &c. in London, to return lists of poor children, &c.

In order that such registers and copies of registers may be correctly made, the master, wardens, and court of assistants have directed that proper forms be printed agreeable to the schedules of the said acts, and sold only at their hall, in Wood-street, Cheapside, (a) and that attendance be there given for such purpose, and for receipt of the returns on Tuesday afternoons from three to five o'clock, and on Thursday mornings till one o'clock.

And whereas several parishes have neglected to make their returns within the time limited; and others have made returns not agreeable to the act, which has occasioned much delay in making up the general abstract, notice is hereby given, that the master and wardens of the said company are determined to put the penalties in force against such churchwardens and vestry clerks, who do not in future make their returns correctly by the fifteenth of February, as required by the said acts. The penalty for neglecting is five pounds.

J. F., Clerk.

[N.B. By a late order of a committee of the House of Commons, it is required, that returns of parish apprentices be in future correctly made, agreeable to schedule E. of the before mentioned act of the seventh George the Third.]

(a) See the form, *post*, 1086.

V. Forms relating to Overseers' Accounts, &c.

88. Overseers' account of infant poor accordingly.

N.B. These columns occupy a folio sheet under the titles as above. See form prescribed in schedule, 7 Geo. III.

		Name of the Child. If a Foundling, mark F. If a Bastard . . . B. If a Casualty . . . C. If the same child is taken in a second time, mark the second entry of the name . . . 2 If a third time, . . . 3, &c.
Y.	M.	Age real or reputed at the time when received.
	D.	Years . . . Y. Months . . . M. Days . . . D.
		If born in the work- house, when.
		If not born in the work- house, when admitted.
£.	s.	If money be received with any child, what sum, such sum not to be transferred from year to year.
	d.	
		When died in the workhouse.
		When sent from the work- house, and by whom nursed till sent.
		What work children past six years of age are employed in. If can read . . . r If can say his or her prayers . . . p If both . . . r p
		When sent to the hospital for exposed and deserted young children.
		If discharged from the pa- rish, to whom delivered and where living. If removed or passed, to what place.
		Nurse's name to whom delivered to be nursed. If a wet nurse, mark W. If a dry nurse . . . D If the nurse dies or is changed, write the name of the new nurse under the former. If nursed by the mother, mark M.
		Place where the nurse lives. In what place, or near what sign, so as to be found.
		Price of nursing each week.
£.	s.	Reward given to nurses.
	d.	
		If died at nurse, when.
		If past six years of age, and brought to the workhouse, mark W. If discharged, mention to whom, and where living. If apprenticed, mention folio of the register of apprentices.

Annual Register of the Parish Poor Children until they are apprenticed out, from the 1st day of January to the 31st day of December, of the Parish of St. Dunstan in the West, London, (where there is a Workhouse or Parish-house) according to the Acts of Parliament of the Second and Seventh of his Majesty King George the Third.

Year, 18 . . .

[Name of Parish.]
A General Account or Balance Sheet kept and delivered by the Parochial Officers of a Parish in London.
An Account of the Receipts and Expenditure of Messrs. A. B. and C. D., Overseers of the Poor, from Lady-day, 1829, to Lady-day, 1830.

Messrs. E. F. and G. H.'s Arrears.										Disbursements.						
Assessments uncollected.			Serjeants' Inn uncollected.			Other Inhabitants uncollected.			Collected.		£.	s.	d.			
£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.				d.		
Ending at Midsummer, 1822	126	0	9	89	12	11	36	7	10	20	0	0	1100	13	9	
Michaelmas.....	150	9	2	89	12	11	60	16	3	13	13	7	798	1	3	
Christmas	149	4	0	82	15	0	66	9	0	32	12	0	197	2	10	
Lady-day, 1823 ..	247	3	0	82	15	0	164	8	0	128	16	0	44	10	0	
£	672	16	11	344	15	10	328	1	1	175	1	7	146	2	10	
The Amount collected, viz. £175 1s. 7d. paid to Mr. A., to Balance his Account.												85	12	9		
Messrs. A. B. and C. D.'s Rates and Receipts.												5	12	6		
1 Quarter to Midsummer, 1823												48	1	8		
1 ditto to Michaelmas												52	10	0		
1 ditto to Christmas												16	0	2		
1 ditto to Lady-day, 1824 ..												175	0	0		
£ 3366												48	0	0		
To Cash received for Illegitimate Children												26	10	0		
for Maintenance of Paupers												22	14	6		
of E. F. late Overseer, his Balance												14	11	2		
of G. H.												30	1	2		
from Guildhall, (a Fine)												27	5	0		
												2838	9	7		
												73	1	2		
												£ 2911	10	9		

Messrs. A. B. and C. D.'s Rates and Receipts.

Assessments.				Serjeant's Inn uncollected.				Other Inhabitants uncollected.				Totals.			
£.	s.	d.		£.	s.	d.		£.	s.	d.		£.	s.	d.	
1 Quarter to Midsummer, 1823	843	0	0	82	15	0		27	2	0		2818	12	0	
1 ditto to Michaelmas	843	0	0	82	15	0		48	16	0		41	4	0	
1 ditto to Christmas	841	14	0	82	15	0		60	9	0		42	13	11	
1 ditto to Lady-day, 1824 ..	838	9	0	82	15	0		80	4	0		0	15	1	
£	3366	3	0	331	0	0		216	11	0		7	17	9	
To Cash received for Illegitimate Children										£ 2911 10 9					
for Maintenance of Paupers															
of E. F. late Overseer, his Balance															
of G. H.															
from Guildhall, (a Fine)															

The foregoing Accounts were Audited the 30th day of June, 1824, and allowed at a Vestry held on the 8th day of July following.

Y. Z., Vestry Clerk.

V. Forms relating to Overseers' Accounts.

House of Commons.

Mercurij, 3^o die Novembris, 1830.

Ordered,

That the churchwardens and overseers of the poor of every parish, township, or other place, in England and Wales, do prepare an account, shewing the total amount of money levied for poor rates and county rates, in the year ending on 25th March, 1830, upon such parish, township, or other place maintaining its own poor; and also the total amount of money expended in that year; distinguishing in the said account the amount of money paid for any other purposes than the relief of the poor; and that such churchwardens and overseers do, as soon as may be, transmit such account to the clerk of the House of Commons; stating, in addition to such account, whether any select vestry has been formed, or an assistant overseer appointed, by virtue of the act 59 Geo. III. c. 12; and any other observations which may be thought necessary.

To the Churchwardens or Overseers.

Be pleased to turn over, and write on the two next pages the name of the county and place, and your answer, as required by the above order, and then return this sheet by the post; a direction being printed at the back of it for that purpose.

** * * The totals of the poor rate accounts annually exhibited to the magistrates, within fourteen days after the appointment of the new parish officers, (under the acts 43 Eliz. c. 2; and 40 Geo. III. c. 49,) will enable the present parish officers to answer the above questions.*

County of
Hundred
or
Wapentake

Township
or
Tything

of

Account in obedience to the order of the House of Commons.

Poor Rates.		For the Year ending 25th March, 1830.			Questions.
		£	s.	d.	
Total Amount of money levied					1.—Has any Select Vestry been formed by virtue of the Act 59 Geo. III. c. 12? One Vestry is chosen every year, but open for any one to attend.
Total Amount of Money expended					
Deduct Amount of Money paid for any purpose or Pur- poses other than the Relief of the Poor					2.—Has an Assistant Overseer been appointed by virtue of the Act 59 Geo. III. c. 12? The Vestry Clerk acts as Assistant Overseer, in con- junction with the Poor Committee.
Expended for the Relief of the Poor £					

Observations, if any :

The Sum expended includes law expenses (naming all the different kinds of expense.)

[The Parish Officers to sign here.]

Signed by the Churchwardens and Overseers and Vestry Clerk.

Signed this day of 183 , } by us
[Name of usual Post-Office Town.]
at near

V. Form re-
lating to Over-
seers' Accounts,
&c.

V. Forms relating to Overseers' Accounts, &c.

House of Commons,
27th November, 1830.

89. Requisition for return to be made.

Gentlemen,

It is earnestly hoped, that your immediate attention to the enclosed order will prevent the necessity of adopting measures for enforcing an obedience to the same; as the completion of the account is retarded for want of your return.

I remain,

Gentlemen,

Your obedient servant,

A. B.

p. 240.

90. The allowance of overseer's account, under 50 Geo. 3, c. 49. (a)

County of } Perused, allowed, and approved of, the above account, (the same having
to wit. } been first signed and verified on oath by A. B. and C. D., church-
wardens, and E. F. and G. H., overseers of the poor of the said parish
of) by and before us, two of his Majesty's justices of the peace in and for the
said county of the day of one thousand eight hundred and
thirty-one. (b)

L. M.
N. O.

91. Summons to overseers of the poor to verify and pass their accounts before two justices, under the 50 Geo. 3, c. 489.

To A. B. and C. D., late Overseers of the Poor of the parish of Barking, in the county of Esser, for the year commencing one thousand eight hundred and thirty, and ending one thousand eight hundred and thirty-one.

County of } We, G. H. and I. K., esquires, whose hands and seals are hereunto
Essex, } set and subscribed, two of his Majesty's justices of the peace,
to wit. } (one whereof is of the quorum,) inhabiting in [or near] the said
parish of Barking, in pursuance of the statutes made for the relief of the poor, and for obliging the overseers to pass their accounts, do will and require you forthwith, on sight hereof, to make up and perfect your accounts in writing of all sums of money received and disbursed in execution of your said offices as overseers of the poor aforesaid, for and towards the relief and maintenance of the poor of the said parish of Barking: and, being so perfected, that you do bring the same to us, the said justices, at on the day of next, at eleven of the clock in the fore [or after] noon of the same day, and verify the same on oath; and that, in the meantime, you present your said accounts to the inhabitants of your said parish hereunder named, whom, or any three of whom, we desire to meet together and examine the said accounts, and report their opinion thereof to us in writing at the time and place aforesaid.

Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and thirty-one.

G. H. (L. S.)
I. K. (L. S.)

Inhabitants above referred to.

O. P., Q. R., S. T., U. V., W. X., &c.

p. 247.

92. Information against an overseer for refusing to account, &c. under 50 Geo. 3, c. 49, s. 1, ante, 241. (c)

County of } The information and complaint of A. B., overseer of the poor of the
Essex } parish of Barking, in the county of Essex, made on oath before us,
to wit. } C. D. and E. F., esquires, two of his Majesty's justices of the peace in
and for the said county, this day of in the year of our Lord one thousand eight hundred and thirty-one, who saith that L. M., now [or late] of the parish of Barking aforesaid, yeoman, was on the twenty-fifth of March, in the year of our Lord one thousand eight hundred and thirty-one, at the parish aforesaid, duly appointed one of the overseers of the poor for the said parish of Barking, and duly accepted and acted in the execution of his office, and that on the day of last past, he the said A. B., and one G. H., of the said parish of Barking, yeoman, were duly appointed to succeed the said L. M., and one other person, as overseers of the poor of the said parish of Barking, and that he, the said L. M., duly took upon himself and acted in pursuance of his said appointment; and that after the passing of the statute in that case made and provided, and after the said L. M. ceased to be

(a) See the act, ante, 24. The 50 Geo. III. c. 49, s. 1, directs that this allowance shall be at the foot of the account.

(b) See form of certificate by the

auditor, ante, 1011.

(c) N.B. The form in the prior editions seems incorrect, as unnecessarily setting out the statutes, and not stating a sufficient demand, &c.

an overseer of the poor of the said parish, and within fourteen days after he the said A. B. and G. H. were so nominated and appointed overseers to succeed the said L. M. and the said other person as overseer of the poor of the said parish, that is to say, on the day of A. D. the said A. B. and G. H. requested the said L. M. (who then and there had notice of the premises) according to the statute in that case made and provided, to deliver in to the said A. B. and G. H. as such succeeding overseers, a just, true, and perfect account in writing, fairly entered in a book or books kept or to be kept for that purpose, and signed by the said L. M. under his hand, of all sums of money by him received, or rated and assessed, and not received, and also of all goods, chattels, stock and materials, that had been in the hands of the said L. M. or in the hands of any of the poor, in order to be wrought, and of all monies paid by the said L. M. as such overseer, and of all things concerning his said office, and also to pay, &c. [pursuing the duties in the 2d section]. Yet the said L. M. then and there and from thence hitherto wholly refused and neglected to deliver unto the said G. H. his said successor, or to make or yield up to his said successors, or either of them, such account verified as aforesaid, within the time limited or appointed by the said statute; contrary to the statute in that case made and provided. And therefore he, the said A. B., prays that justice may be done in the premises.

V. Forms relating to Overseers' Accounts, &c.

A. B.

Before us, C. D.
E. F.

p. 249.

To the Constables of the parish of Barking, in the said county, and to the Keeper of the Common Gaol at Chelmsford, in the said county of Essex.

County of } Whereas information and complaint upon oath have been made
Essex, } before us, C. D. and E. F., esquires, two of his Majesty's justices of the
to wit. } peace in and for the said county of Essex, by A. B., one of the over-
seers of the poor in the said parish of Barking, in the said county [insert the whole
of the information, and proceed as *suprà*, inserting the words, "contrary to the
statute in such case made and provided" and then conclude thus:] These are there-
fore to charge and command you, the said constable, forthwith to apprehend the said
and him safely to convey to the common gaol of the said county of Essex, at
Chelmsford, in the said county, and there deliver him to the keeper thereof, together
with this precept; and we do hereby also command you, the said keeper of the said
common gaol, to receive and him there safely keep until he shall have given such
account, and shall have paid or yielded up such money, goods, chattels, and other
things in his hands as aforesaid.

93. Commitment of an overseer for neglecting to account, founded on the foregoing information, and on 50 Geo. 3, c. 49, s. 1.(a)

Given under our hands and seals, at in the said county of Essex, the
day of in the year of our Lord one thousand eight hundred and thirty-one.

C. D. (L. S.)

E. F. (L. S.)

p. 247.

To L. M. and N. O., Churchwardens, and P. Q. and R. S., Overseers of the Poor of the parish of Barking, in the county of Essex.

County of } Whereas upon examining and stating the accounts of G. H. and I. K.,
Essex } two of the overseers of the poor of the said parish of Barking, for the
to wit. } year one thousand eight hundred and thirty it appears unto us,
A B. and C. D., esquires, two of his Majesty's justices of the peace in and for the
said county (one whereof being of the quorum), dwelling in [or near] the said parish
of Barking, and we do adjudge, that there is remaining in the hands of the said G. H.
and I. K., on balance of their said accounts of money by them received for and
towards the necessary relief of the poor of the said parish for the said year, over and
above all the sums of money by them paid, the sum of which they, the said
G. H. and I. K. have not, nor hath either of them, delivered or paid over to the
churchwardens and overseers of the poor of the said parish for the present year, and
that the sum of is due from them upon their said accounts: These are, there-
fore, in his Majesty's name, and by virtue of the statute in that case made and pro-
vided, to will and require you, the said L. M. and N. O., the present churchwardens,
and P. Q. and R. S., the present overseers of the poor of the said parish of Barking,
or some or one of you, to levy the said sum of so due from the said G. H. and
I. K., upon their said accounts, by distress and sale of the goods and chattels of
the said G. H. and I. K., rendering to them the overplus; and for want of such

94. Warrant of distress for balance found due from late overseers.

V. Forms relating to Overseers' Accounts, &c.

distress, that you, or some or one of you, do certify the same unto us, to the end there may be such further proceedings therein as by law is required.

Given under our hands and seals, at _____ in the said county of Essex, the day of _____ in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

p. 256.

95. Notice of appeal against allowance of overseers' accounts (a)

To A. B. and C. D., Churchwardens [or, "late Churchwardens"], and E. F. and G. H., Overseers [or, "late Overseers"] of the Poor of the parish of _____ in the county of _____ and to I. K. and L. M., esquires, two of his Majesty's justices of the peace in and for the said county.

I, N. O. an inhabitant of the said parish of _____ in the said county of _____ and rated and assessed in and by a rate or assessment, towards the relief of the poor of the said parish, for the year during which the said A. B. and C. D. and E. F. and G. H., acted as overseers of the poor of the said parish, do hereby give you, and each and every of you, notice that I intend to appeal, and shall appeal at the next general quarter sessions of the peace, to be holden at _____ in and for the said county of _____ against a certain account of you the said churchwardens and overseers of the poor of the said parish, and alleged to have been allowed by you the said I. K. and L. M. as such justices as aforesaid, on the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one last past, and my causes and grounds of appeal, &c. against the said accounts and the said supposed allowance thereof are, first, that, &c. [here state the objections to the accounts, for which see ante, 238 to 258, and where see when or not the notice is too general.]

Dated this _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one.
N. O.

VI. Forms relating to Apprentices.

VI. Forms relating to Apprentices.

96. Indorsement on an order of removal of a mother, ordering the parish from which the mother is to be removed, and where her bastard child was born, to pay to the officers of the parish to which the mother is removed so much per week for support of child.

Whereas it hath been made appear to us, A. B. and C. D., Esquires, the within named justices, that the illegitimate child within described is within the age of nurture, viz., of the age of two years, and that the mother is unwilling and doth refuse to part with the said child: Now we, the justices aforesaid, do hereby order and direct you the churchwardens and overseers of the poor of the within parish of _____ to pay to or reimburse the churchwardens and overseers of the within parish of _____ the weekly sum of _____ for and towards the sustentation and maintenance of the said illegitimate child, from the day of the date of this order so long as the said child shall remain with his [or, her] said mother and be chargeable to the within parish of _____

As witness our hands and seals, this _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

97. Form of indenture of binding apprentice to a chimney-sweeper, and of approbation thereof by justices.

See forms prescribed by 28 Geo. III. c. 48, schedule, ante, 462, 463.

98. Form, in parish indenture, of order of two justices, directing a parish apprentice to continue with widow of master.

See form prescribed by 32 Geo. III. c. 57, schedule B., ante, 468.

99. Form of like order by a separate instrument.

See form prescribed by 32 Geo. III. c. 57, schedule C., ante, 468.

(a) See 41 Geo. III. c. 23, s. 4, ante, 256.

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relating to Ap-
prentices.

See form prescribed by 32 Geo. III. c. 57, schedule D., *ante*, 468.

Idem, schedule E., *ante*, 469.

See form prescribed by 42 Geo. III. c. 46, *ante*, 471.

Prescribed form of conviction, under 42 Geo. III. c. 46, *ante*, 470.

100. Form of assignment of a parish apprentice with the consent of two justices by indorsement on the indenture or counterpart.

101. Form of like assignment by a separate instrument.

102. Form of register of every apprentice to be kept by overseers.

103. Prescribed form of conviction.

p. 477.

County of } Whereas the master of the apprentice in the within indenture
to wit. } mentioned, is about to quit his present residence at and to remove
out of the same county of or forty miles from the place of resi-
dence where the said was bound apprentice, and has given fourteen days' pre-
vious notice, in writing, to the churchwardens and overseers of the poor of the parish
of (a) And whereas the said the apprentice, as also the said and
the overseers of the poor of the said parish of did on the day of the date hereof
appear before us, the justices aforesaid, and upon inquiry we do find (b)
And we, the said justices, do hereby order that the said the apprentice afore-
said, may (c) And we do further order that the said the former master
of the said do pay to the intended new master of the said the sum
of as and for the expense of assigning or binding of the said apprentice to the
said as aforesaid, being, in our judgment, a reasonable part and proportion of
the original apprentice fee, paid to the said on h being bound an apprentice
to the said

104. Assignment of apprentice on removal of the master from the county, or forty miles from the parish.

Given under our hands and seals this day of in the year of our Lord
one thousand eight hundred and thirty-six.

[To be signed by the churchwardens, overseers, and parties.]

p. 476.

County of } Whereas G. H. and I. K., the overseers of the poor of the parish of L.,
to wit. } in the county of have, on this day of in the first year
of the reign of our sovereign lord the now King William the Fourth, at
the parish of in the said county, brought before us, A. B. and C. D., two of
his Majesty's justices assigned to keep the peace in, and acting in and for the said
county of and also to hear and determine divers felonies, trespasses, and other
misdemeanors committed in the said county, O. P., a poor child of the age of (d) ten
years and upwards, belonging to the said parish of in the said county, and
whose parents, M. P. and N. P., are not able to maintain such child: and the said
G. H. and I. K., as such overseers of the poor of the parish of aforesaid, have
proposed to us, the said justices, to bind such child to be an apprentice to one Y. Z., of
the parish of in the county of and residing within the distance of (e)
miles from the parish and place to which the said child belongs, and as an
apprentice with him the said Y. Z. to dwell and serve until the said O. P. shall

105. Justices' order to bind a poor apprentice within forty miles, under 56 Geo. 3, c. 139.

(a) The parish in which the appren-
tice resides at the time of removal.

(b) Here insert whether the apprentice
is to continue with his master in another
parish, or whether to be assigned or dis-

charged

(c) Here insert as above.

(d) The child's age must exceed nine
years.

(e) If in another county, insert *forty*.

VI. Forms
relating to Ap-
prentices.

attain the age of years (a) according to the statutes in such case made and provided: And whereas we, the said justices, having inquired into the propriety of binding such child apprentice to the said Y. Z., and having particularly inquired and considered whether such person doth reside or have his place of business within a reasonable distance from the place to which such child doth so belong as aforesaid, having regard to the means of communication between such places, and whether any circumstances make it fit in the judgment of us, the said justices, that such child should be placed apprentice at a greater distance. (b) And whereas the parents of the said O. P. reside at near to the parish of L., we have particularly inquired of them as to the distance of the residence and place of business of the said Y. Z. from the parish of L., and having also inquired into the circumstances and character of the said Y. Z., we, the said justices, upon such examination and inquiry, do think it proper that such child should be bound apprentice to the said Y. Z. Now, therefore, we, the said justices, do declare, that the said Y. Z. is a fit person to whom the said O. P. may be properly bound apprentice as aforesaid; and we do, therefore, hereby order that the said G. H. and I. K., the overseers of the parish of aforesaid, are at liberty to bind such child apprentice accordingly.

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

p. 476.

106. Allowance of
the indenture by
justices. (c)

We, A. B. and C. D., esquires, whose names are hereunder written, two of his Majesty's justices of the peace for the county of (whereof one is of the quorum), do consent to the putting forth O. P., of as an apprentice, according to the intent and meaning of this indenture; [it having been proved upon oath before us, that due notice, in writing, has been given by the overseers of the poor of the parish of (the parish binding such apprentice), to the overseers of the poor of the parish of (the parish in which such apprentice is to serve), of such binding being intended] [or it having been admitted by A. B. present before us, and one of the overseers of the parish of that he had received due notice, in writing, of the intended binding,] and do sign this our allowance of such apprenticeship before the same hath been executed by any of the other parties thereto, in pursuance of the statute in such case made and provided.

Dated this day of in the year of our Lord one thousand eight hundred and thirty-one.

Signed, sealed, and delivered, } I. K.
in the presence of } L. M.

A. B.
C. D.

107. Indenture of
apprenticeship.

This indenture, made the day of in the first year of the reign of our sovereign lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, defender of the faith, and in the year of our Lord one thousand eight hundred and thirty-one, Witnesseth, that R. S. and T. V., churchwardens of the parish of in the county of and W. X. and Y. Z., overseers of the poor of the said parish (by and with the consent of the two of his Majesty's justices of the peace for the said county of whose names are in the margin of this indenture subscribed, and also by and with the consent of and two of his Majesty's justices of the peace for the county of whose names are also in the margin of this indenture subscribed, and by virtue and in pursuance of an order in writing hereon indorsed, made by and under the hands and seals of the said and justices of the peace of the said county of in pursuance of the statute in that case made and provided, bearing date the day of

(a) Or, if a female, add, or until the time of her marriage, which shall first happen.

(b) If the father and mother be examined, state so; if dead, omit all that part which relates to the examination of

the parents as to the distance of the intended master's residence.

(c) The clause within the brackets is necessary whenever the binding parish is different from that in which the apprentice is to be bound. (See ante, 530.)

instant, (a) have put and placed, and by these presents do put and place aged fourteen years, or thereabouts, a poor child of the said parish of apprentice to of the parish of in the county of with him to dwell and serve, from the day of the date of these presents, until the said apprentice shall accomplish his full age of twenty-one years, (b) according to the statute in that case made and provided; During all which term the said apprentice his said master faithfully shall serve, in all lawful businesses, according to his power, wit, and ability, and honestly, orderly, and obediently, in all things demean himself towards his said master, and all his, during the said term; And the said for himself, his executors, and administrators, doth covenant and grant, to and with the said churchwardens and overseers of the poor, and every of them, their and every of their executors and administrators, and their and every of their successors for the time being, by these presents, that he the said the said apprentice in shall and will teach and instruct, or cause to be taught and instructed, in the best way and manner that he can; And shall and will, during all the term aforesaid, find, provide, and allow unto the said apprentice, competent and sufficient meat, drink, and apparel, lodging, washing, and all other things necessary and fit for an apprentice: Provided always, (c) that the said last-mentioned covenant on the part of the said h executors and administrators, to be done and performed, shall continue and be in force for no longer time than three calendar months next after the death of the said in case he the said shall happen to die during the apprenticeship, according to the provision of an act passed in the thirty-second year of the reign of King George the Third, intituled, "An Act for the further regulation of Parish Apprentices," and also of another act passed in the fifty-sixth year of his late Majesty, intituled, "An Act to regulate the Binding of Parish Apprentices:" And also shall and will so provide for the said apprentice, that he be not any way a charge to the said or parishioners of the same; but of and from all charge shall and will save the parish of harmless and indemnified during the said term.

In witness whereof the parties above-said to the present indenture interchangeably have set their hands and seals the day and year above-written.

(L. S.)

(L. S.)

(L. S.)

(L. S.)

County of } Whereas G. H. and I. K., the overseers of the poor of the parish of
in the county of have, on this day of in the
to wit. } first year of the reign of our sovereign lord the now King William the
Fourth, at the parish of in the said county, brought before us, A. B. and
C. D., two of his Majesty's justices assigned to keep the peace, acting in and for the
said county of and also to hear and determine divers felonies, trespasses, and other
misdemeanors committed in the said county, O. P. a poor child of the age of ten (d)
years and upwards, belonging to the said parish of in the said county, and
whose parents M. P. and N. P. are not able to maintain such child; and the said
G. H. and I. K., as such overseers of the poor of the parish of aforesaid, have
proposed to us, the said justices, to bind such child to be an apprentice to one Y. Z.
of the parish of in the county of he the said Y. Z. residing (e) out of
the same county of aforesaid, at a greater distance than forty miles from the
parish of aforesaid, to which such child so belongs as aforesaid; and the said
parish of to which such child so belongs as aforesaid, being also more than
forty miles from the city of London, and as an apprentice with him the said Y. Z.
to dwell and serve until the said O. P. shall come to the age of years (f)

108. Justices' order for binding apprentice at upwards of forty miles distance.

(a) An indenture in which the date of the order is omitted is void, and no settlement is gained by serving under it, see *Rex v. Banburgh*, 2 Bar. & Cres. 222.

(b) If the pauper intended to be bound be a female, the alternative of marriage must be inserted, in pursuance of 18 George III. c. 47, viz. or until she shall marry, as shall first happen.

(d) The child's age must exceed nine years.

(c) This provision is prescribed by the schedule, p. 468.

(e) Or according to the facts, having an establishment in trade at which it is intended such child should be employed.

(f) Or, if a female, add, or until the time of her marriage, which shall first happen.

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according to the statutes in such case made and provided: And whereas we, the said justices, having now here enquired into the propriety of binding such child apprentice to the said Y. Z., and having particularly enquired and considered whether the place of business [or residence] of the said Y. Z. is within a reasonable distance from the place to which such child doth so belong as aforesaid, (having regard to the means of communication between such places.) (a) And having particularly enquired of G. H. and I. K. the parents of the said child as to the said distance of the residence [or place of business] of the said Y. Z., and the means of communication therewith; having also now here enquired into the circumstances and character of the said Y. Z. And whereas also we, the said justices, have now here particularly enquired into and considered the grounds for allowing of the apprenticing of such child to the said Y. Z., so residing and having an establishment in trade, at a greater distance than forty miles from the said parish and place to which such child so belongs as aforesaid, we do hereby find the grounds following; that is to say, (b) And whereas also, on such examination and enquiry, we, the said justices, think it proper that such child should be bound apprentice to the said Y. Z., notwithstanding he the said Y. Z. resides (c) Now, therefore, we the said justices do declare, that the said Y. Z. is a fit person to whom the said child may be properly bound as apprentice as aforesaid; and we do therefore hereby order and direct that the said G. H. and I. K., the overseers of the poor of the parish of aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly.

Given under our hands and seals, this day of in the year of our Lord
one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

p. 484.

This form it seems must be prescribed by the commissioners, and the following might be adopted.

109. Form of certificate by justices that the rules of the commissioners have been complied with.

Whereas, before the making of the above indenture, the Poor Law Commissioners for England and Wales have ordered the following rules to be observed in apprenticing the children of poor persons, that is to say [here set out the rules, &c.] and which said rules are now in force; we the said A. B. and C. D., justices as aforesaid, [or one justice,] having duly inquired, do hereby certify that the said rules have been in all respects duly complied with.

Signed,

VII. Forms relating to Removals.

p. 843.

110. Examination of an Irish pauper in order to his removal, under 3 & 4 W. 4, c. 40.

County of } The examination of taken on oath before us two of his
to wit. } Majesty's justices of the peace acting in and for the county
[riding, city, borough, town corporate, division, or liberty] aforesaid,
this day of in the year of our Lord one thousand eight hundred and
who on oath saith, that according to the best of his knowledge and belief he was
born in in that part of the united kingdom called Ireland, [or Scotland, or in
the Isle of Man, or Scilly,] which he left about years ago, and hath done no
act whereby to gain a settlement in that part of the united kingdom called England,
and hath actually become and is now chargeable to the parish of in the county
of and that he hath a wife named and children, neither of which
children has gained a settlement in England.

Sworn the day and year first above written, before us,

A. B.
C. D.

(a) If father and mother examined, state this, or if dead say so, if not examined, omit the passage.

(b) Here set out the reasons, according to the fact, thus, because it appears to us, that there is no person within the said distance of forty miles, to whom

such child may be properly bound apprentice, &c.

(c) Or according to the facts, has an establishment in trade at a greater distance than forty miles from the said parish and place to which the said child belongs as aforesaid.

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relating to
Removals.

See, *ante*, 1001. The same form may be used in removing the poor to Guernsey and Jersey, under 11 Geo. IV. c. 5, *ante*, 97, although that statute has not prescribed any form.

111. Form of order of Removal of Irish or Scotch poor, given by 3 & 4 W. 4, c. 40.

County of } The information and complaint of G. H. and I. K. churchwardens,
to wit. } and L. M. and O. P. overseers of the poor of the parish of
in the county of unto us, two of his Majesty's justices of the
peace in and for the county of one being of the quorum, who say that E. F.,
late of the parish of in the county of labourer, hath lately come into
their said parish of not having obtained any legal settlement there, and hath
become chargeable thereto. And that the last legal settlement of the said E. F. is
in the said parish of in the said county of and that he ought by law to
be sent thereunto, and they pray that justice may be done in the premises

112. Information of overseers in order to remove a pauper.

Dated this day of

L. M.
O. P.

To the Churchwardens and Overseers of the parish of and to each and every of them.

County of } This is to summon you or some or one of you to appear (if you shall
to wit. } think fit) before me, A. B., one of his Majesty's justices of the peace
in and for the said county, and such others, his Majesty's justices of
the peace, for the said county of as shall be at the house of in in
the said county of known by the sign of the Red Lion, at the hour of
in the noon of the same day, to show cause why E. F., a pauper, actually
chargeable to the parish of in the said county, should not be removed from the
said parish of to your said parish of in the county of

113. Summons of one justice to the overseers of the parish to which it is intended to remove a pauper, to show cause against the order of removal. (a)

Given under my hand and seal this day of in the year of our Lord
one thousand eight hundred and thirty-one.

A. B. (L. S.)

To the Constable of the parish of

Forasmuch as complaint hath been made before us, A. B. and C. D., two
to wit. } of his Majesty's justices of the peace in and for the said county, by
the churchwardens and overseers of the poor of the said parish of in the county
aforesaid, that E. F., now resident in the said parish of hath come to inhabit
in the said parish, not having gained any legal settlement therein, nor produced any
certificate owning him to be settled elsewhere, and that the said E. F. hath become
chargeable to the said parish of [or is an unmarried woman and with child, which
child is likely to be born a bastard, and to be chargeable, as the case may be,] and
that his [or her] last legal settlement is the parish of in the said county.

114. Warrant of two justices to bring a pauper before them, and be examined as to his settlement. (b)

These are therefore to require you to bring the said E. F. before us to be examined concerning the place of his [or her] last legal settlement, and to be dealt with according to law. Herein fail you not.

Given under our hands and seals this day of in the year of our Lord
one thousand eight hundred and thirty-one.

A. B. (L. S.)
C. D. (L. S.)

(a) This summons is not absolutely necessary, but it is recommended in cases where the settlement is doubtful, by

which the expense attending an appeal may be very often saved.

(b) This may be issued by one justice to bring the pauper before two.

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115. Summons to
the pauper, to
show cause against
his removal. (a)

To in the parish of in the county of
County of } This is to summon you to appear (if you think proper) before us and
 } such other of his Majesty's justices of the peace for the said county of
to wit. } as shall be present at on the day of at the
hour of } in the noon of the same day, to show cause why you, the said
 } who have come to inhabit in the parish of and have become chargeable to the
same without having gained a legal settlement therein, or producing a certificate
acknowledging yourself to be settled elsewhere, should not be removed from the said
parish of in the said county, to your said parish of as the place of your
last legal settlement.

Given under our hands and seals this day of in the year of our Lord
one thousand eight hundred and

A. B. (L. S.)
C. D. (L. S.)

116. Form of exa-
mination of a pau-
per as to a deri-
vative settlement
from his father. (b)

County of } The examination of E. F., now resident in the parish of in the
 } said county, labourer, of and concerning the place of his last legal set-
to wit. } tlement, taken upon oath before us, two of his Majesty's justices of the
peace in and for the said county, the day of one thousand eight hun-
dred and thirty-one.

Who upon his oath saith, that he is about thirty-five years of age, and that his
father and mother were settled inhabitants in the parish of in the county of
 , and that his father gained a settlement in the said parish of by rent-
ing and occupying a dwelling house of one in the said parish of of the
yearly rent of twenty pounds [or as the facts may have been]. And this examinant
saith that he hath never, to the best of his knowledge and belief, done any act
whereby to gain a settlement in his own right; and that on or about the first day of
April, A. D. 1819, he was lawfully married to Mary, his present wife, in the parish
church of in the county of by whom he hath two children, namely,
Thomas, aged eight years, and Agnes, aged four years, or thereabouts; and that he
is now actually chargeable to the said parish of

Taken and sworn before us the day } A. B.
and year first above written. } C. D.

117. The like as to
a pauper's having
gained a settle-
ment by hiring
and service.

County of } The examination of E. F., now resident in the parish of in the
 } said county, labourer, of and concerning the place of his last legal set-
to wit. } tlement, taken upon oath before us, A. B. and C. D., esquires, two of
his Majesty's justices of the peace in and for the said county, the day of
one thousand eight hundred and thirty-one.

Who upon his oath saith, that, about three years ago, he, then a single man, was
hired by and did contract and engage to serve one L. M., of the parish of in
the county of farmer, in husbandry, for one year, at the wages of and
that he served his said master, under that hiring, one whole year, in the said parish
of (viz., from the first day of in the year of our Lord to the first
day of in the year of our Lord) and received a full year's wages,
since which time he, this examinant, hath not, to the best of his knowledge and belief,
done any act whereby to gain a subsequent settlement; and that about two years ago
he was lawfully married to G. F., his present wife, in the parish church of in
the county of by whom he has one child, namely H. F., aged twelve months,
and that he is now actually chargeable to the said parish of in the said county
of

Taken and sworn before us the day } A. B.
and year first above written. } C. D.

118. Examination
of soldier.

See ante, 861.

(a) This summons, though seldom
used, is advisable in case the pauper
himself is not examined as to his settle-
ment; if he is examined, it appears
unnecessary, as the order is usually
made at the time of taking the examina-

tion.

(b) Much attention must be paid to
these forms, as in the event of an appeal
against the order, the respondent cannot
go into any ground of removal not set
forth in the examination, ante, 890.

To the Churchwardens and Overseers of the Poor of the parish of _____ in the
said county of _____ and to the Churchwardens and Overseers of the Poor of the
parish of _____ in the county of _____ and to each and every of them.

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County of _____ } Upon the complaint of the churchwardens and overseers of the poor of
to wit. } the parish of _____ aforesaid, in the said county of _____ unto us whose
names are hereunto set, and seals affixed, being two of his Majesty's
justices of the peace in and for the said county of _____ and one of us of the quorum,
that _____ his wife _____ their son, aged eight years, and _____ their daughter,
aged four years, have come to inhabit in the said parish of _____ not having gained
a legal settlement there, and that the said _____ his wife, and _____ and _____ their
children, are actually chargeable to the said parish of _____ [or, that the said
(viz. the pauper) hath been convicted of larceny, or other felony, or is a
rogue, vagabond," &c. [as it may be] or that the said _____ is an unmarried woman,
and is with child, and is actually chargeable to the said parish of _____.] We,
the said justices, upon due proof made thereof, as well upon examination of the said
_____ upon oath, as otherwise, upon due consideration had of the premises, do ad-
judge the same to be true; and we do likewise adjudge that the lawful settlement of
them the said _____ his wife, and _____ and _____ their children, is in the said
parish of _____ in the county of _____. We do, therefore, require you, the church-
wardens and overseers of the said parish of _____ or some one of you, to convey the
said _____ his wife, and _____ and _____ their children, from and out of the said
parish of _____ to the said parish of _____ and them to deliver to the churchwardens
and overseers of the poor there, or to some or one of them, together with this our order,
or a true copy thereof, at the same time showing to them the original; and we do
also hereby require you, the said churchwardens and overseers of the poor of the said
parish of _____ to receive and provide for them according to law.

119. General order
of removal under
13 & 14 Car. 2 (a).

Given under our hands and seals this _____ day of _____ in the _____ year of
the reign of his said Majesty George the Fourth.

A. B. (L. S.)
C. D. (L. S.)

To the Churchwardens and Overseers of the Poor of the Parish of _____ in the
City of London, and the Churchwardens and Overseers of the Poor of the
Parish of _____ and to every of them.

120. The like in
another form in
London.

London } Whereas complaint hath been made unto us, two of his Majesty's jus-
to wit. } tices of the peace in and for the city of London and liberties thereof (one
being of the quorum), by the churchwardens and overseers of the poor of the said
parish of _____ in the city of London, that E. F., of the parish of _____ in
the county of _____ and there legally settled, hath lately come to reside in their
said parish, not having obtained any legal settlement there, and hath become charge-
able thereto, which complaint we, the said justices, upon due proof made thereof, as
well upon the oath of the said E. F., as otherwise, do adjudge to be true; and we do
also adjudge the last legal settlement of the said E. F. to be in the said parish of _____
in the county of _____ and that thitherto he ought by law to be sent.

These are therefore in his Majesty's name to will and require you, the church-
wardens and overseers of the poor of the said parish of _____ in the city of London,
forthwith to remove and convey the said E. F. from and out of your said parish
of _____ unto the said parish of _____ in the said county of _____ and him deliver
unto the churchwardens and overseers of the poor there, or to some or one of them, to-
gether with this our order, who is and are hereby required to receive and provide for
him according to law.

Given under our hands and seals, this _____ day of _____ one thousand eight
hundred and thirty-six.

A. B. (L. S.)
C. D. (L. S.)

To the Overseers [or Guardians] of the Poor of the Parish of _____ in the County
of _____

121. Notice that
an order of re-
moval has been
made.

We hereby give you notice, that A. B., a poor person, with his wife C., and three
children, D. aged _____ years, E. aged _____ years, and F. aged _____ years, have

(a) For the form of an order of removal of a certificated person, see post, 1100,
form 124.

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become chargeable to the parish of _____ in the county of _____ [or have been relieved by the parish of A., in the workhouse belonging to the said parish], and that an order by two justices has been duly obtained by us for their removal to your parish, and herewith we send you the counterpart of the said order, and a copy of the examination upon which such order was made.

Dated the _____ day of _____ one thousand eight hundred and thirty-six.]

[N. B. To be signed by the majority of persons acting as overseers, or three guardians.]

p. 871.

122. Indorsement, suspending an order of removal, to be indorsed on the back thereof, as in ordinary cases.

Whereas it doth appear unto us _____ and _____ the justices within named, that the pauper [or the husband, or wife, or children] within ordered to be removed is at present unable to travel by reason of sickness and infirmity [or that it would be dangerous for him so to do, as the facts may be]: We do therefore hereby suspend the execution of the within order of removal, until it shall be made appear unto us that the same may safely be executed without danger.

Given under our hands, the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-six.

A. B.
C. D.

p. 871.

123. Form of a subsequent permission to execute the order of removal, to be indorsed thereon, and order of payment of the expenses incurred by such suspension. (a)

Whereas it hath been now made appear unto us, A. B. and C. D. the justices aforesaid, and we are fully satisfied that the within order of removal may be executed without danger: We do therefore hereby order the same to be forthwith put in execution accordingly: And whereas it is duly proved to us upon oath [if the parties have died, say, that the said _____ the pauper above mentioned is dead, and] that the sum of _____ hath been necessarily incurred by the suspension of the within order of removal, we do therefore order and direct the churchwardens or overseers of the poor of the parish of _____ to which parish the said _____ is [was, if the pauper is dead], ordered to be removed, to pay the said sum of _____ to N. P. upon demand.

Given under our hands, the _____ day of _____ in the year of our Lord one thousand eight hundred and thirty-six.

A. B.
C. D.

p. 880.

124. Order of removal of a certificated person back to the certifying parish, he having become chargeable, and to pay costs of removal back.

To the Churchwardens and Overseers of the Poor of the Parish of _____ in the County of _____ and to the Churchwardens and Overseers of the Poor of the Parish of _____ in the County of _____.

County of _____ } Whereas complaint hath been made by the churchwardens and overseers of the poor of the parish of _____ aforesaid, in the said county of _____ to wit. } unto us whose names are hereunto set and seals affixed, being two of his Majesty's justices of the peace in and for the said county of _____ (and one of us of the quorum), that A. B., C. B., his wife, E. B., their son, aged eight years, and G. B., their daughter, aged four years, having for some time last past dwelt in the parish of _____ aforesaid, being allowed so to do by reason of a certificate bearing date the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ under the hands and seals of _____ and _____ churchwardens and _____ overseers of the poor of the said parish of _____ attested by I. K. and L. M., two credible witnesses, and allowed by N. O. and P. Q., esquires, two of his Majesty's justices of the peace for the said county of _____ according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish: And whereas it appears to us, as well upon the oath of the said A. B. as otherwise, that neither they the said A. B., C. B., his wife, E. B. and G. B., their children, nor any of them, have gained any legal settlement since the date of the said certificate; whereby and upon due consideration had of the premises it appears to us, and we do hereby adjudge, that the said A. B., C. B., his wife, and

(a) This is the same form that received the approbation of Le Blanc, J., ante, 873.

E. B. and G. B., their children, are become chargeable to the parish of _____ and that the place of the last legal settlement of them, and every of them, is in the said parish of _____ in the said county of _____: These are therefore to require you, the said churchwardens and overseers of the poor of the said parish of _____ or some or one of you, to convey the said A. B., C. B., his wife, and E. B. and G. B., their children, from and out of your said parish of _____ to the said parish of _____ and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time showing to them the original: And we do also hereby require you, the said churchwardens and overseers of the poor of the said parish of _____ to receive and provide for them as inhabitants of your parish: And we do also hereby order and direct you, the said churchwardens and overseers of the poor of the said parish of _____ to reimburse and pay unto the said churchwardens and overseers of the poor of the parish of _____ the sum of _____ being the amount of the reasonable charges that they, the said churchwardens and overseers of the poor of the parish of _____ have been put unto, in maintaining and removing the said _____ ascertained and allowed by us, the said justices.

Given under our hands and seals, at _____ and in the county aforesaid, this
day of _____ in the year of our Lord one thousand eight hundred and _____

R. S. (L. S.)

T. U. (L. S.)

Ante, p. 877.

Be it remembered, that on the _____ day of _____ in the _____ year of the reign of our sovereign lord George the Fourth, of the united kingdom of Great Britain and Ireland King, defender of the faith, at _____ in the county of _____ R. T., overseer of the poor of the parish of _____ aforesaid, in the county aforesaid, cometh before us, J. C. and S. P., esquires, two of the justices of our said lord the king assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and of the quorum, and complaineth to us, the said justices, and giveth us to understand and be informed that S. C., son of A. C., aged _____ years, hath come to inhabit and doth inhabit in the said parish of _____ in the county aforesaid, and is become chargeable to the said parish; and that the said S. C. hath not gained any legal settlement within the parish, nor hath produced any certificate owning him the said S. C. to be settled elsewhere, and thereupon he, the said R. T., prayeth our warrant to remove and convey the said S. C., to the parish or place where he, the said S. C., was last legally settled.

125. Record of an order of removal to be filed at the quarter sessions, (a).

And on the said _____ day of _____ in the year aforesaid, at _____ aforesaid, in the county aforesaid, M. C., grandmother of the said S. C., cometh before us, the justices aforesaid, and upon oath on the holy gospel to her then and there by us the said justices aforesaid administered, deposeth and sweareth, that she the said M. C. had a daughter whose name was A. C., which A. C. was never married, and is now dead, and that she the said A. C. did bear the said S., her son, at the parish of _____ in the county aforesaid, and that the said S. hath been carried and gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said parish of _____ with W. C., grandfather of him the said S.

Whereupon, and on due consideration had of the premises, we the justices aforesaid, on the said _____ day of _____ in the year aforesaid, at _____ aforesaid, in the county aforesaid, do make our warrant under our hands and seals, in the form and words following, that is to say [here set forth the warrant of removal.] And, afterwards, on the _____ day of _____ in the year aforesaid, at _____ aforesaid, in the county aforesaid, the said R. T., overseer of the poor aforesaid, cometh before us, the justices aforesaid, and upon his oath on the holy gospel, to him by the said justices administered, deposeth and sweareth, that on the _____ day of _____ in the year aforesaid, he, the said R. T., did remove and convey the said S. C. from and out of the said parish of _____ to the said parish of _____ and him the said S. C. together with a true copy of our warrant aforesaid, did deliver to O. P., overseer of the poor of the

(a) See the law and observations, ante, 877.

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parish of
aforesaid.

aforesaid, at the parish of

aforesaid, in the county

*In witness whereof we, the said justices, at
aforesaid, the day of in the year aforesaid, to this present record
do set our hands and seals.*

J. C.
S. P.

[To this record should be annexed the order of removal, confirmed at the sessions, on appeal or not appealed against. And it may be proper to have duplicates, one filed at the sessions, and the other kept by the parish.]

To Y. Z., Constable (or state the occupation of the person appointed) of the
parish of in the said county.

126. Deputation
of a person to
remove a pauper.

County of } *Whereas, by an order under the hands and seals of A. B. and
to wit. } C. D., esquires, two of his Majesty's justices of the peace in and
for the said county, bearing date the day of
instant, the following persons, viz. E. F., Mary, his wife, Thomas, their son,
aged eight years, and Agnes, their daughter, aged four years, are ordered to be
removed from the parish of in the county of as the place of
their last legal settlement. Now we, the undersigned churchwardens and over-
seers of the poor of the said parish of do hereby depute you, the said
Y. Z., to convey the persons so ordered to be removed as aforesaid, to the said
parish of and them to deliver to some one of the churchwardens or over-
seers of the poor there, together with the accompanying order of removal.*

*Given under our hands at aforesaid, the day of
in the year of our Lord one thousand eight hundred and thirty-one.*

N. O. }
P. Q. } Churchwardens.
G. H. }
I. K. } Overseers.
L. M. }

127. A justice's
order to con-
stable to remove
a vagrant to his
place of settle-
ment in days,
and that he be
allowed only
l.

To the Constable of the parish of in the county of
to wit. } and to the Treasurer of the said county.

*Whereas by a pass under the hands and seals of two of his Majesty's justices
of the peace, for the county of E. F. was ordered to be removed from
the parish above-named to as the place of his last legal settlement.*

*I do therefore hereby order and direct the said person to be conveyed in
days' time, from the parish of aforesaid, in the county of to the
town of in the county of in the way to aforesaid, for
which the constable is to be allowed the sum of pounds shillings,
and pence, and no more.*

*Given under my hand this day of one thousand eight hun-
dred and thirty-one.*

A. B.

128. Receipt of
the vagrant by
the constable of
the parish to
which removed,
and statement of
amount of ex-
penses.

*Received of the constable of the parish of in the county of
the within mentioned E. F. with his examination and pass, the
day of one thousand eight hundred and thirty-one.*

By me, G. H., Constable of the parish of

*Conveyance of E. F. in a cart miles at per mile..
Subsistence days at per day
Lodging nights at per night
Constable going before a justice for certificate
Certificate
Toll*

Total expense..... £

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relating to
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County of } The information and complaint of G. H., one of the overseers of
to wit. } the poor of the parish of in the said county, made on oath
in and for the said county, the before me, A. B., esquire, one of his Majesty's justices of the peace
one thousand eight hundred and thirty-one; day of in the year of our Lord

129. Information of an overseer of the poor, that the expenses directed to be paid, on taking off the suspension from an order of removal, have been refused, or neglected to be discharged, under 35 Geo. III. c. 11, s. 2.

Who says that by an order under the hands and seals of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of and bearing date the day of in the year of our Lord one thousand eight hundred and thirty-one, E. F., a pauper then actually chargeable to the said parish of was ordered to be removed from the said parish of to the parish of in the county of as the place of his last legal settlement, but the execution of which order of removal was by the said two justices, by indorsement on the said order, suspended for the reason therein expressed; and further, that by a subsequent indorsement on the said order of removal, under the hands of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of bearing date the day of in the year of our Lord one thousand eight hundred and thirty-one, the said suspension was removed with a permission to execute the said order, and also that it appeared unto them, the said last-mentioned justices, that the sum of had been incurred by the suspension of the said order of removal, and that they, the said last mentioned justices, did therefore order and direct the churchwardens and overseers of the poor of the parish of to which parish the said was ordered to be removed, to pay the said sum of to upon demand, which said order of removal has since been carried into execution, and the original order hath been duly tendered and shown to the said and the said sum duly demanded of and from him the said one of the overseers of the poor of the parish of aforesaid, by him the said on the day of last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since. The said complainant therefore prays such redress in the premises as to law doth appertain.

Before me, A. B.

To the Constable of

130. Summons on the foregoing information.

County of } Whereas information and complaint hath been made before me,
to wit. } A. B., esquire, one of his Majesty's justices of the peace for the said
of the parish of } county, on the oath of of one of the overseers of the poor
information]. These are therefore to require you forthwith to summon the said
to appear before me, A. B., esquire, at in the said county,
on the day of at the hour of in the
noon of the same day, to answer to the said information and complaint, and to
be further dealt with according to law. And be you then there to certify what
you shall have done in the premises: Herein fail you not.

Given, &c.

A. B.

To the Churchwardens and Overseers of the Poor of the parish of
in the said county of

131. Warrant of distress thereupon.

County of } Whereas it has been duly made appear unto me, J. P., esquire, one
of his Majesty's justices of the peace in and for the said county of
as well upon the oath of O. P., overseer of the poor of the said parish
of as otherwise, that by an order under the hands and seals of J. P.
and K. P., esquires, two of his Majesty's justices of the peace in and for the said
county of and bearing date the day of in the year of
our Lord one thousand eight hundred and A. P., a pauper, then actually
chargeable to the said parish of was ordered to be removed from the
said parish of to the parish of in the county of as

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the place of his last legal settlement, but the execution of which order of removal was by the said justices, by indorsement on the said order, suspended for the reason therein expressed; And further, that by a subsequent indorsement on the said order of removal under the hands of J. P. and K. P., esquires, two of his Majesty's justices of the peace in and for the said county of _____ bearing date the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ the said suspension was removed with permission to execute the said order: And also that it appeared unto them, the said last-mentioned justices, that the sum of _____ had been necessarily incurred by the suspension of the said order of removal, and that they, the said last-mentioned justices, did therefore order and direct the churchwardens and overseers of the poor of the parish of _____ to which parish the said A. P. was ordered to be removed, to pay the sum of _____ to O. P., upon demand, which said order of removal has since been carried into execution, and the said sum duly demanded of and from N. O., one of the overseers of the poor of the parish of _____ aforesaid, by him the said O. P., on the _____ day of _____ last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since: I do therefore hereby require you to levy the money mentioned in the said order, by distress and sale of the goods and chattels of the said N. O., the person refusing or neglecting payment of the same, and also the further sum of _____ [this sum not to exceed forty shillings, according to stat. 35 Geo. III. c. 101, s. 2,] being the costs attending the same. And if within the space of four days next after such distress by you taken, the said respective sums of _____ and _____ shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you detain the said respective sums, rendering to the said N. O. the overplus on demand.

Given under my hand and seal the _____ day of _____ in the year of our Lord one thousand eight hundred and _____

132. Form of notice to produce rate-books, &c., which may be appended to the notice of appeal.

[It may be advisable, where the question of settlement arises from a renting in the respondent's parish, to have the poor's rate book produced to the court: if so, after the words "parish of _____" add, And we hereby further give you notice to produce, at the hearing of the said appeal at the time aforesaid, all and every the rate book or books belonging to the said parish of _____ wherein are entered and kept the rates paid or payable for the year one thousand eight hundred and thirty _____ up to and including the year one thousand eight hundred and thirty _____ and all other papers and writings, relating to or concerning the said rates, during the above years, or any of them.]

Ante, p. 890.

133. General notice of appeal against an order of removal.

To the Churchwardens and Overseers of the Poor of the parish _____ in the _____ county of _____ and to each and every of them.

We whose names are hereto subscribed, being the churchwardens and overseers of the poor of the parish of _____ in the county of _____ do hereby give notice to you and every of you, that we do intend at the next general quarter sessions of the peace to be holden, by adjournment, at _____ in and for the said county of _____ on the _____ day of _____ instant, to commence and prosecute an appeal against a certain order of A. B. and C. D., two of his Majesty's justices of the peace acting in and for the said county of _____ bearing date on the _____ day of _____ instant, for and concerning the removal of _____ his wife and _____ their son, aged _____ from the parish of _____ aforesaid, to the said parish of _____

And the following are the grounds of our appeal:—

Because no notice in writing of the paupers' having been chargeable or relieved by the respondent parish, and no copy of the order or examination upon which the order was made have been sent by the overseers or guardians of the respon-

dent parish to those of the appellant parish (a). Because the pauper ought not to have been removed, as the appellant gave due notice of appeal against the order within twenty-one days after notice in writing of such order and the pauper's chargeability (b). Because the pauper was not chargeable to the respondent parish at the time when the said order was made. Because the pauper did not come to settle in the respondent parish, but met with an accident therein, in his passage through the same, and ought not to have been removed (c). Because the pauper is settled in the respondent parish (d). Because the pauper is settled in the respondent parish by hiring and service. Because the pauper never acquired any settlement in the appellant parish in the manner stated in the examination sent to the appellants (e). Because the pauper acquired a settlement in the parish of A., subsequently to that acquired by him in our parish. Because the pauper was resident on his own estate (f), or occupying a tenement, or living as a yearly servant (g) in the respondent parish, and therefore irremovable. Because the husband of the pauper is not settled in our parish. Because the pauper has been removed from her husband without his consent (h). Because the pauper is the wife of an Irishman and ought to have been sent to Ireland, according to the statute (i). Because the pauper is within the age of nurture, and ought not to have been removed from her mother (k) who is resident in the respondent parish. Because the place to which the pauper has been removed is extra-parochial (l). Because the persons who acted as overseers in obtaining this order were not duly appointed (m). Because the justices who signed the said order acted separately and not together.

Witness our hands, this

day of

in the year

A. B. } Churchwardens.
C. D. }

E. F. } Overseers.
G. H. }

or any Three Guardians.

To the Churchwardens and Overseers of the Poor of the parish of C
and others whom this may concern.

in 134. Another
notice of grounds
of appeal against
order of re-
moval.

A. C. and C. C., the churchwardens, and O. O. and O. P., the overseers of the poor of the parish of Saint P. in the county of do hereby give you notice that the grounds of the appeal against the removal to the parish last aforesaid, of R. S. and F. his wife, of which we have already given you notice, and upon which we shall rely at the trial thereof, are that the said R. S. and F. his wife were

(a) The statement of the grounds of appeal is required by the 4 & 5 Will. IV. c. 76, s. 81, (*ante*, 890), and it must be served fourteen days before the sessions, either with the notice or by itself. In general, this statement had better be incorporated in the notice of appeal; but there may be cases where notice is given to prevent an actual removal, and yet it may not be convenient at the same time to specify the grounds; then a separate statement may be made.

Those grounds only should be selected which the appellants can safely rely on, as the court of quarter sessions may order the costs of the unsuccessful objections to be paid by the appellant, although they quash the order on some tenable objection, s. 83. In selecting the objections the appellant should in some degree be guided by the examination on which the removal was

made, as the respondent will be confined to that on hearing the appeal.

(b) This is required by the 81st section of the 4 & 5 Will. IV. c. 76, and is, it seems, a proper ground of appeal, and indeed the only remedy for the omission of it; and as this is a matter of form, it will not prevent a fresh removal to the same parish.

(c) *Ante*, p. 90.

(b) *R. v. Justices of Cornwall*, *ante*, 892; and *R. v. Justices of Newcastle*, 1 B. & Ad.

(e) See s. 81 of 4 & 5 Will. IV. c. 76.

(f) *Ante*, p. 725.

(g) See *R. v. Alveley*, *ante*, 837.

(h) Page 315.

(i) Page 316.

(k) Page 56, 284.

(l) Page 845.

(m) Page 30.

VII. Forms
relating to
Removals.

not at the time of the removal, nor are they chargeable to the parish of Saint P. aforesaid, because the said R. S. gained a legal settlement in the parish of aforesaid, prior to the passing of a certain Act of Parliament, made and passed in the first year of the reign of King William the Fourth, intituled "An Act to explain and amend an Act of the sixth year of his late Majesty King George the Fourth, as far as regards the Settlement of the Poor, by the Renting and Occupation of Tenements," he the said R. S. having rented and occupied a tenement in the parish of C. aforesaid, at the annual rent of ten pounds from Michaelmas day one thousand eight hundred and twenty-seven, up to and until the passing of the said act and from that period hitherto; and also that you the said overseers and churchwardens of C. aforesaid, omitted to give or send by post or otherwise to us the said churchwardens or overseers of Saint P. aforesaid, prior to the said removal of the said R. S. and F. his wife, any notice in writing of their being chargeable to or relieved by the said parish of C. accompanied by any copy or counterpart of the order of such removal, or by a copy of the examination upon which such order was made, pursuant to the statute in that case made and provided, and we hereby further give you notice to produce at the hearing of the said appeal, all and every the rate book or books belonging to the said parish of C. wherein are entered and kept the rates paid or payable for the year one thousand eight hundred and twenty-seven, up to and including the year one thousand eight hundred and thirty-four, and all and every other papers and writings relating to or concerning the said rates during the above years or any of them.

Dated this day of one thousand eight hundred and thirty

135. Notice of
appeal against an
order of re-
moval before
removal (a).

To the Churchwardens and Overseers of the Poor of the parish of in
the county of

County of } This is to give notice to you and every of you, that we the church-
wardens and overseers of the poor of the parish of in
to wit. } the county of do intend at the next quarter sessions of the
peace but one, to be holden for the said county of to commence and
prosecute an appeal against an order of A. B. and C. D., two of his Majesty's
justices of the peace of the said county of for and concerning the order
for the removal of E. F., from your said parish of to our said parish of

Witness our hands this day of in the year of our Lord one
thousand eight hundred and thirty-six.

G. H. }
I. K. } Churchwardens.

L. M. }
N. O. } Overseers of the Poor.

[If the statement of the grounds of appeal accompanies the notice of appeal, it may be as follows, and will come in at the asterisk (*) above.]

And that the grounds of such appeal are, that there was in fact no such hiring or service for a year as in the examination in this case is stated, the said hiring having been for a less period than a year, [or there having been only a service without any year's hiring, as the case may be]. And that after the said hiring and the service under the same, namely, about two days before Martinmas one thousand eight hundred and twenty-nine, the said L. M. hired with one J. P. of in the parish of in the county of for one year until the Martinmas one thousand eight hundred and thirty, and served him accordingly. And also that the said L. M., after he had so served the said J. P., as last aforesaid at Christmas one thousand eight hundred and thirty, rented a house and garden at in the parish of in the county of from B. H. of that place, at the rent of ten pounds a year, and occupied the same under such renting or hiring from that time until and paid the rent, and also was assessed to and paid the poor rate due for the same during the

(a) If it is intended to appeal before parish within twenty-eight days after removal, the notice of appeal must be notice of the order.
sent so as to be received by removing

whole of that time [so stating all the settlements or other grounds of appeal intended to be insisted upon at the trial.]

And take notice that at the trial of the said appeal, we on behalf of the said appellant parish shall give evidence of the said several grounds, some or one of them in support of the said appeal.

Witness our hands this day of one thousand eight hundred and thirty-four.

[If on the contrary, the statement of the grounds of appeal be given either afterwards or in a separate paper, it may be in this form.]

To the Churchwardens and Overseers of the Poor of the parish of in the county of

In the matter of an appeal wherein the parish of is the appellant and the parish of is respondent.

Take notice that the grounds of the above appeal are [here state the grounds, and conclude as above.]

VII. Forms relating to Removals.

To the Churchwardens and Overseers of the Poor of the parish of in the county of and to each and every of them.

Whereas at the last general quarter sessions of the peace holden at [if by adjournment state so] in and for the said county of on the day of last, we whose names are hereto subscribed, being the churchwardens and overseers of the poor of the parish of in the county of did enter an appeal against a certain order of and two of his Majesty's justices of the peace acting in and for the said county of bearing date on the day of for the removal of from the parish of aforesaid, to the said parish of and the hearing of such appeal was by the said court of quarter sessions respited until the next general quarter sessions of the peace to be holden at aforesaid, on the day of instant. Now we, the said churchwardens and overseers of aforesaid, do hereby give you notice that we do intend to prosecute and try the said appeal at the said next general quarter sessions of the peace to be holden at aforesaid, for the said county of on the said day of instant. And the following are the grounds of our appeal. [State the grounds of appeal as in the above precedent.]

136. Notice of grounds of appeal sent separate from the order.

A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers.
Or any Three Guardians.

To the Churchwardens, &c.

Gentlemen,

I do hereby, as the attorney of and for the churchwardens and overseers, of the poor of the parish of in the county of countermand the notice of appeal lately given to you, against an order of removal of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for the said county of for and concerning the removal of E. F. to the parish of in the county of

138. Countermand of notice of appeal.

Dated this day of in the year of our Lord one thousand eight hundred and thirty-one.

L. M., Attorney, &c.

To the Worshipful his Majesty's Justices of the Peace in and for the county of in their general quarter sessions of the peace assembled.

139. Petition of appeal against removal.

The humble Petition and Appeal of the Churchwardens and Overseers of the Poor of the parish of in the county of Sheweth,

That, by virtue of an order or pass warrant under the hands and seals of A. B. and C. D., esquires, two of his Majesty's justices of the peace in and for

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relating to
Removals.

the said county of _____ bearing date, &c., E. B., and her four children, named, &c. [follow the words of the order] were removed from the parish of _____ in the said county of _____ to the parish of _____ in the county aforesaid, alleging the said parish of _____ to be the place of the legal settlement of the said E. B. and her said children.

That your petitioners conceive themselves to be aggrieved by the said order or pass warrant, and do appeal to your worships therefrom.

Your petitioners, therefore, humbly pray that your worships will be pleased to hear them in the premises, and to order that the churchwardens and overseers of the poor of the said parish of _____ may appear before your worships at a certain day, to be appointed for that purpose, to hear and abide by your judgment and determination touching the said appeal.

And your petitioners will ever pray, &c.

A. B. } Churchwardens of the
C. D. } said parish of
E. F. } Overseers of, &c.
G. H. }

140. Order for
hearing there-
upon.

to wit. } At the general quarter sessions of the peace of our Lord the King,
said county, on _____ the _____ day of _____ at the sessions house for the _____ year, &c.

It is ordered that the churchwardens and overseers of the poor of the parish of _____ have notice of the within appeal, and that they and all persons concerned do attend the court at the sessions house aforesaid, on _____ next the _____ day of _____ instant, at nine of the clock in the forenoon, to hear and abide the judgment and determination of the said court touching the said appeal.

141. Notice to
produce
pauper (a).

The Churchwardens, } Appellants.
&c.
and

The Churchwardens, } Respondents.
&c.

Gentlemen,

I hereby give you notice to produce the pauper, E. F., at the hearing of the appeal, that he may be examined by the court touching his settlement.

Dated the _____ day of _____ in the year of our Lord

X. Y.,

Solicitor for the Respondents.

To the Churchwardens, &c.

142. Notice of
abandonment of
order after re-
moval of pauper.

To the Churchwardens and Overseers of the Poor of the parish of _____
to wit. } Whereas, under and by virtue of an order of removal under the
hands and seals of J. C. and S. P., esquires, two of his Majesty's
justices of the peace in and for the county of _____ bearing date the
day of _____ eighteen hundred and _____ A. B. and her child E., aged
years, were removed from the parish of _____ in the said county of _____ to
the parish of _____ in the county of _____ as the place of their last legal
settlement. And whereas, since the said removal, we have discovered and are
satisfied that the said parish of _____ is not the place of the last legal settle-
ment of the said paupers, and we have accordingly consented to take back the
said paupers, and abandon the said order of removal. Now we, the undersigned,

(a) It is a common, but we apprehend a useless practice, to serve this notice. The appellants are not bound under such notice to produce the pauper, as they have only the maintenance and not the custody of him. The proper mode is to serve the pauper with a *subpœna*.

being the major part of the churchwardens and overseers of the poor of the said parish of do hereby give you notice that we have abandoned, and do hereby abandon, the said order of removal, and do agree to take back the said paupers, and do also consent and agree to pay the said parish of and the churchwardens and overseers thereof, all costs, charges, and expenses attending the said removal and order, or incident thereto.

Dated the day of in the year of our Lord eighteen hundred and

A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers, &c.

[This notice may be given before appeal preferred, but if appeal entered, it is advisable to get it allowed by consent at the sessions.]

to wit. } Whereas, in and by order of removal or pass warrant under the hands and seals of us J. C. and S. P., esquires, whose names are hereunto set, and seals affixed, being two of his Majesty's justices of the peace in and for the county of bearing date the day of now last past, made upon the complaint of the churchwardens and overseers of the poor of the parish of in the said county, that A. B., single woman, had then lately come to inhabit in the said parish, not having gained a legal settlement there, nor produced any certificate owning herself to be settled elsewhere, and that the said A. B. was actually chargeable to the said parish: We, the said justices, upon proof then made thereof before us, and upon the examination of the said A. B. upon oath and due consideration had of the premises, did adjudge that the lawful settlement of the said A. B. was in the parish of in the county of and therefore we required the said churchwardens and overseers of the poor of the said parish of or some or one of them, to convey the said A. B. from and out of their said parish to the said parish of and her to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with our said order, or a true copy thereof, who were thereby required to receive and provide for her as an inhabitant of their said parish. And whereas the said A. B. was accordingly removed and conveyed from the said parish of to the parish of and delivered to the churchwardens and overseers of the poor there, together with a copy of our said order, pursuant to the directions therein contained. And whereas, it has been since represented, and duly made to appear unto us, the said justices, by the churchwardens and overseers of the poor of the said parish of that the said A. B. hath not any legal settlement in the said parish of and that the examination and declaration of the said A. B., taken upon the making of the said order as aforesaid, were founded in mistake, which hath since been discovered. Therefore we, the said justices, upon the application, and at the request of the said churchwardens and overseers of the poor of the parish of (in order to prevent the charges and expenses of an appeal to the general quarter sessions of the peace for the said county of against the said order of removal) do hereby supersede, annul, vacate and set aside the said order, and do command the churchwardens and overseers of the poor of the said parishes respectively, to give up and return the said order, and the copy thereof, to us, that the same may be cancelled and made void to all intents and purposes whatsoever. And we do also require the said churchwardens and overseers of the poor of the said parish of to receive back the said A. B., and maintain and provide for her until they can free themselves from the charge thereof by due course of law.

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and

J. L.
S. P.

to wit. } At the general sessions of the peace of our Lord the King, holden in and for the county of at the sessions house for the appeal allowed

**VII. Forms
relating to
Removals.**

by consent, to
return pauper
to the removing
parish.

said county, on the day of in the year of the reign of our sovereign lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, defender of the faith, before A. B., C. D., &c. esquires, and others their fellows justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county.

Whereas, the churchwardens and overseers of the poor of the parish of in the county of did at the last general quarter sessions of the peace held in and for this county, exhibit their petition and appeal, setting forth, that by virtue of a warrant or order of removal, under the hands and seals of J. C. esquire, and the Rev. J. B., Doctor in Divinity, two of his Majesty's justices of the peace acting in and for the county of one whereof being of the quorum, bearing date the day of 18 A. B., single woman, big with child, was removed from the parish of in the county of to the said parish of as the place of the last legal settlement of the said A. B., whereby the petitioners conceived themselves aggrieved, which said appeal stood duly adjourned until this session. Now upon hearing the said appeal, in the presence and hearing of the churchwardens and overseers of the poor of the said parish of and they consenting by their counsel to the allowing the said appeal, it is ordered that the said appeal be and the same is hereby allowed, and the said order of the said two justices is hereby vacated and set aside. And it is further ordered, that the churchwardens and overseers of the poor of the said parish of do forthwith convey and deliver back the said A. B., single woman, (together with a copy of this order), unto the churchwardens and overseers of the poor of the said parish of who are hereby required to receive and provide for the said A. B., single woman, until they can free themselves from the charge hereof by due course of law. And it is further ordered that the churchwardens and overseers of the poor of the said parish of do forthwith pay or cause to be paid unto the churchwardens and overseers of the poor of the parish of the sum of for their charges and expenses in relieving and maintaining the said A. B., single woman, since her said removal.

By the Court,

S.

145. Certiorari
to remove an
order of re-
moval, &c., into
King's Bench.

William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, defender of the faith, to the Keeper of our Peace, and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our county of Hereford, and to every of them greeting:

We being willing, for certain reasons, that all and singular orders made by you or some of you, between the inhabitants of St. Peter in our city of Hereford, appellants, and the inhabitants of Kington, in our said county of Hereford, respondents, touching the settlement of Charlotte Stephens, single woman, be sent by you before us, do command you and every of you, that you, or one of you, do send under your seals, or the seal of one of you, before us on the morrow of All-Souls, wheresoever we shall then be in England, all and singular the said orders, with all things touching the same, as fully and perfectly as they have been taken or made by and before you or some of you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon, what of right and according to the law and custom of England we shall see fit to be done. Witness, Charles Lord Tenterden, at Westminster, the 30th day of June, in the 1st year of our reign.

By the Court,

LUSHINGTON.

Herefordshire, *Easter Sessions*, 1830.VII. Forms
relating to
Removals.} Saint Peter in the city of Hereford, and
} Kington in the county of Hereford.

This was an appeal against an order of two magistrates of the county of Hereford, dated the 1st of March, 1830, for the removal of Charlotte Stephens, single woman, from the parish of Kington in the county of Hereford, to the parish of Saint Peter in the city of Hereford. The order was confirmed, subject to the opinion of the Court of King's Bench, on the following case:

146. Case stated
for opinion of
court of King's
Bench (a).

The pauper, Charlotte Stephens [here state the facts of the case]. It was contended by the appellant parish, that the indenture was void for want of the consent of two magistrates, part of the premium having been paid out of the parochial funds, but the Court confirmed the order, considering that the indenture was not a binding by any overseer or overseers, but by Doctor Lye, who was not overseer of either of the parishes. The Court also considered that the payments by the several parishes were voluntary, and not paid under any legal obligation; and though charged to the parish account, no evidence being produced that the pauper belonged to either parish, there was no occasion to have the consent of magistrates, under 56 Geo. III. c. 139, to the binding.

The question for the opinion of the Court is, Whether the indenture was valid without the consent of the magistrates? If it was not so, the pauper is improperly removed to the parish of Saint Peter.

J. T. Justice.
R. J. Powell.Edward Poole, } *Chairman.*Thos. Bird, } *Clerk of the Peace for the County of Hereford.*

In the King's Bench.

} The King against the Inhabitants of Y.
Hilary Term, 9th & 10th Geo. IV.147. Entry of
quashing order
of justices after
special case.

Be it remembered, that at the general quarter sessions of Northamptonshire. } the peace of our said sovereign lord the King, holden at N., in and for the said county of N., on Thursday in the first week next after the feast of the Epiphany of our Lord Christ, (to wit) the fifteenth day of January, in the ninth year of the reign of our sovereign lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, defender of the faith, and in the year of our Lord one thousand eight hundred and twenty-nine, before J. C. Viscount, A. Chairman, the Rev. H. B. H., doctor in divinity, W. R. C., esquire, T. C., esquire, T. S. W. S., esquires, the Rev. J. Clerk, and others their fellow justices of our said Lord the King, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds done and committed within the same county. It was ordered by the court in manner following [that is to say], Whereas the Rev. W. L. M., clerk, and the Rev. H. K. B., doctor in divinity, two of his Majesty's justices of the peace in and for the said county of N., and one of them of the quorum, did make their order, under their hands and seals, bearing date the twenty-sixth day of July, now last past, for the removal of T. J., S. his wife, and their two children, E. aged nineteen, and G. aged fourteen years, from and out of the parish of Y. in the said county of N., to the parish of S. in the county of H., in which said parish of S. the said justices did adjudge the lawful settlement of them, the said T. J., S. his wife, and their said two children, to be; which said order was in all things duly executed, according to the commands thereof. And whereas the inhabitants of the said parish of S. did, at the last general quarter sessions of the peace for our said Lord the King, holden in and for the said county of N., by leave of the court, enter their appeal against the above-recited order to the judgment of this court, to be tried at the then next and now present general quarter sessions of the

(a) The sessions should find the facts, and not detail the evidence; as specimens of cases neatly drawn, and worthy of imitation, we would refer on a question of apprenticeship to *R. v. St. Paul's, Exeter*, p. 521.

VII. Forms relating to Removals.

peace, holden for the said county. Now, upon a full hearing of the said appeal, and what was alleged by counsel on both sides, this court doth order that the said recited order be quashed, set aside, and discharged; subject nevertheless to the opinion of the honourable the justices of his Majesty's Court of King's Bench at Westminster, on a special case now stated and agreed upon between the parties appellant and respondent, and their counsel, if the respondents shall think proper to remove the same by writ of certiorari into that court, and which case is as follows; [here state the case as agreed on between the parties.]

148. Order of sessions on hearing appeal against an order of removal, quashing same with costs.

County of } At the court of general quarter sessions of the peace of our sovereign lord the King, holden at in and for the said county of in the first week after the Epiphany, to wit, on Thursday, the fourteenth day of January, in the year of the reign of our sovereign lord William the Fourth, King over the United Kingdom of Great Britain and Ireland, and so forth, and in the year of our Lord one thousand eight hundred and thirty, before F. R. P., esquire, chairman, J. D., esquire, and others, justices of our said lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, and so forth, Whereas an appeal against an order for the removal of S. W. B., his wife, and their children, namely, J., aged about years, E., aged about years, and D., aged about months, from the parish of in the county of aforesaid, to the parish of L., in the county of D., stands adjourned to the present quarter sessions. It is now ordered that the said order be and the same is hereby quashed with costs, and also the costs of maintaining the paupers.*

Certificate of taxing the costs.

And we said justices do hereby certify that the appellants are entitled for their costs in this appeal to the sum of pounds, shillings, and pence, and the further sum of pounds, shillings, and pence, for the maintenance of the paupers, making together the sum of pounds, shillings, and pence.

By the Court.

149. The like that the grounds of appeal were frivolous and vexatious and appellant to pay all costs.

*[When the sessions quash or confirm the order, they have the power to award costs to the respondents or appellants, if they think any of the grounds of appeal, or the grounds of removal, are frivolous and vexatious. The form would be the same as above, No. 148 to the asterisk, and then add ;] *we do further adjudge, that the several following grounds of appeal stated in the notice of the appellants, that is to say, [here recite the particular ones,] are frivolous and vexatious, and we do order that the appellant shall pay all such costs as the respondent hath incurred in disputing such grounds. And we do adjudge and certify that the same amount to the sum of pounds, and all other the costs of the said appeal, as well as the costs of maintaining the paupers, be paid by the respondents; and we certify and adjudge that the costs of the said appeal amount to pounds, and the costs of maintenance to pounds.*

By the Court.

150. Warrant to levy by distress on goods of overseers the costs of appeal against order of removal adjudged at the quarter sessions.

N. } To the Constable of D., and to all other constables in the said county to wit. } duly to execute, and T. J., our Special Constable, duly sworn to execute this our warrant.

Whereas it hath this day been duly made to appear unto us, J. W., clerk, and W. R., esquire, two of his Majesty's justices of the peace for the said county of N., as well upon the oath of W. P., one of the churchwardens of the parish of K. in the said county of N., as otherwise, that upon a certain appeal against our order for the removal of W. M. and H. his wife, and W. their child, from the parish of D. in the said county of N., to the said parish of K. in the said county—the court of quarter sessions for the county aforesaid, by the order dated the seventh day of January now last past, did amongst other things order that the churchwardens and overseers of the poor of the said parish of D., should, upon notice to them, or any of them, given of the said order, pay to the churchwardens and overseers of the poor of the said parish of K., or to

some one of them, the sum of pounds for their just and reasonable costs and charges upon the determination of the said appeal by the said court. And that the said sum of pounds so ordered to be paid as aforesaid, was on the day of instant, duly demanded of and from E. L., esquire, and R. B., esquire, the overseers of the poor of the said parish of D., by the said W. P., and that the said order was at the same time shown to the said E. L. and R. B., who respectively looked at the same, but they did not, nor did either of them, then or at any time since pay the said sum of pounds, or any part thereof, to the said W. P., but therein hath made default; whereby and by virtue of the said statute in such case made and provided, the said sum of pounds may be levied of the said goods and chattels of the said E. L. and R. B., as overseers of the parish of D. aforesaid. These are, therefore, to command you to make distress of the goods and chattels of the said E. L. and R. B., and if within the space of eight days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the monies arising by such sale you do pay the sum of pounds to the churchwardens and overseers of the poor of the parish of K. aforesaid, or to one of them, rendering the overplus, if any, on demand, unto the said E. L. or R. B., the reasonable charges of making and keeping and selling the said distress being first deducted; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-five.

J. W.
W. R.

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The first of these is the fact that the
the second is the fact that the
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